

**AMENDED AND RESTATED MANAGEMENT AGREEMENT**

**BETWEEN THE**

**HOPLAND BAND OF POMO INDIANS,**

**a federally recognized Indian tribe**

**AND**

**ELLIS GAMING HOPLAND MANAGEMENT, LLC,**

**a Nevada Limited Liability Company**

**DATED AS OF April 27, 2006**

**FOR EXECUTION**

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## **LIST OF EXHIBITS**

- A. Existing Facility Site
- B. Guaranty
- C. Pending Tribe Litigation
- D. Manager's Affiliates, Principal Shareholders, Officers and Directors

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## AMENDED AND RESTATED MANAGEMENT AGREEMENT

**THIS AMENDED AND RESTATED MANAGEMENT AGREEMENT** ("Agreement") has been entered into as of April 27, 2006, by and between the **HOPLAND BAND OF POMO INDIANS**, a federally recognized Indian tribe (the "Tribe"), and **ELLIS GAMING HOPLAND MANAGEMENT, LLC**, a Nevada limited liability company (the "Manager").

### RECITALS

- A. The Tribe is a federally recognized Indian tribe with sovereign powers of self-government, including the power to conduct gaming pursuant to the Indian Gaming Regulatory Act of 1988.
- B. Ellis Gaming Hopland Management, LLC is a Nevada limited liability company with experience in gaming management.
- C. To improve the economic conditions of its members, to enable it to serve the social, economic, educational and health needs of the Tribe, to increase the revenues of the Tribe and to enhance the Tribe's economic self sufficiency and self determination, the Tribe intends to continue and improve its existing Sho-Ka-Wah Casino operations ("Existing Facility" or the "Facility") on lands currently in trust for the benefit of the Tribe.
- D. The Tribe seeks assistance in operating and managing the Facility. Manager has represented to the Tribe that it has the expertise, staff and financial capacity to operate and manage the Facility for the Tribe.
- E. The Tribe desires to grant Manager the exclusive right and obligation to manage, operate and maintain the Facility as described in this Agreement.
- F. This Agreement is entered into pursuant to the Indian Gaming Regulatory Act of 1988, PL 100-497, 25 U.S.C. Section 2701 et seq., as that statute may from time to time be amended and modified (the "IGRA"). All gaming conducted at the Facility will at all times comply with the IGRA, applicable Tribe law and the Compact.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions and promises herein contained, the receipt and sufficiency of which are expressly acknowledged, the Tribe and Manager hereby agree as follows:

## **ARTICLE 1            DEFINITIONS**

As they are used in this Agreement, the terms listed below shall have the meaning assigned to them in this Section:

“Agreement” shall mean this Amended and Restated Management Agreement, as such Agreement is modified, amended and/or restated from time to time in accordance with the provisions set forth herein.

“Affiliate” means as to Manager, any corporation, partnership, limited liability company, joint venture, trust department or agency or individual controlled by, under common control with, or which directly or indirectly controls, Manager; and as to the Tribe, any corporation, partnership, limited liability company, joint venture, trust department or agency or individual controlled by, under common control with, or which directly or indirectly controls, the Tribe.

“BIA” shall mean the Bureau of Indian Affairs of the Department of the Interior of the United States of America.

“Business Board” shall mean the decision-making body created by the Manager and the Tribe and described in Section 3.3.

“Calculation Year” shall mean the twelve (12) month period commencing on the Commencement Date and each successive twelve (12) month period.

“Capital Budget” shall mean the capital budget described in Section 3.18.

“Capital Replacement(s)” shall mean any alteration or rebuilding or renovation of the Facility, and any replacement of Furnishings and Equipment, the cost of which is capitalized and depreciated rather than being expensed under GAAP.

“Capital Replacement Reserve” shall mean the reserve described in Section 3.20, into which periodic contributions are paid pursuant to Section 3.21.

“Cash Collateral Account” shall mean the collateral account in favor of Manager established under subsection 4.1(b) hereof.

“Change of Control” shall mean a change in the membership of Manager that results in a person or entity other than Ellis Gaming, LLC as controlling Manager, or that results in a change of control of Ellis Gaming, LLC.

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“Class II Gaming” shall mean Class II Gaming as defined in the IGRA but only to the extent such games are authorized by Tribal ordinance and licensed by the Hopland Gaming Commission.

“Class III Gaming” shall mean Class III Gaming as defined in the IGRA but only to the extent such games are allowed by the Compact, authorized by Tribal ordinance and licensed by the Hopland Gaming Commission.

“Collateral” shall mean (i) the undistributed Net Revenues of the Facility; and (ii) the Furnishings and Equipment of the Facility, and all replacements and substitutions therefore and accessions thereto, but only to the extent that the Furnishings and Equipment are not financed by any Senior Financing and encumbered by a corresponding Senior Financing lien. Net Revenues shall cease to be Collateral at the moment such Net Revenues become Tribal Distributions, and the Collateral shall not include Tribal Distributions, assets of the Tribe purchased with Tribal Distributions, or any other asset of the Tribe. The Collateral also shall exclude any interest in the Tribe’s reservation or trust lands or any fixtures attached thereto, and shall exclude any other trust assets of the Tribe.

“Collateral Agreements” shall mean any agreements defined as collateral agreements under 25 U.S.C. Section 2711(a)(3) and regulations issued thereto at 25 C.F.R. Section 502.5, and as may be amended.

“Commencement Date” shall mean Effective Date.

“Compact” shall mean the Compact between the Tribe and the State, deemed approved and in effect, pursuant to notice published on May 16, 2000, in the Federal Register, as the same may, from time to time, be amended; or such other compact or consent decree that may be substituted therefor.

“Compensation” shall mean the direct salaries and wages paid to, or accrued for the benefit of, any employee, including incentive compensation and bonuses, together with all fringe benefits payable to or accrued for the benefit of such executive or other employee, including employer’s contribution under F.I.C.A., unemployment compensation or other employment taxes, pension fund contributions, workers’ compensation, group life, accident and health insurance premiums and costs, and profit sharing, severance, retirement, disability, relocation, housing and other similar benefits.

“Confidential Information” shall mean the information described in Section 17.15.

“Constitution” shall mean the Constitution of the Tribe, ratified by a vote of registered tribal voters in an election held on August 3, 1981 through August 8, 1981.

“Consulting Agreement” shall mean the consulting agreement between Ellis Gaming, LLC and the Tribe, dated as of April 19, 2005, as thereafter amended.

“Debtor Relief Law” means the Bankruptcy Code of the United States of America, as amended from time to time, or any other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief law from time to time in effect affecting the rights of creditors generally.

“Disbursement Accounts” shall mean the bank account or accounts described in subsection 4.1(c).

“Economically Feasible” means, for purposes of Section 11.6, that the Net Revenues from any operations of the Enterprise in question shall on a monthly basis exceed the aggregate debt service payments due and payable during such month on each of the Loans and any other indebtedness to which Manager has subordinated its liens.

“Effective Date” shall have the meaning provided in Section 17.23.

“Ellis Gaming, LLC” shall mean Ellis Gaming, LLC, a Nevada limited liability company which is the sole owner of Manager.

“Emergency Condition” shall have the meaning set forth in Section 3.19.

“Enterprise” shall mean the enterprise of the Tribe created by the Tribe to engage in Class II and Class III Gaming at the Facility, and which shall include all gaming at the Facility and any other lawful commercial activity allowed in the Facility but not conducted by the Tribe’s Economic Development Corporation, including but not limited to the sale of alcohol, tobacco, gifts and souvenirs.

“Enterprise Accounts” shall mean those accounts described in subsection 4.1(a).

“Enterprise Employee” shall mean all employees who work at the Facility, and shall not include any employees of Manager who provide services to the Enterprise.

“Enterprise Employee Policies” shall mean those employee policies described in subsection 3.9(b).

“Enterprise Investment Policy” shall have the meaning described in subsection 4.1(a).

“Existing Facility” shall mean the Tribe’s existing gaming facility with a minimum of gaming devices operated by the Tribe as the Sho-Ka-Wah Casino located on the Hopland Indian Reservation in Hopland, California. 64

“Existing Facility Site” shall mean the parcel of trust land in Hopland, California, on which the Existing Facility is located, described on the attached Exhibit A.

“Facility” shall mean the temporary and permanent buildings, structures and improvements located on the Existing Facility Site and all fixtures, Furnishings and Equipment attached to, forming a part of, or necessary for the operation of the Enterprise on such Existing Facility Site.

“Fiscal Year” shall mean commencing as of the Commencement Date, each twelve (12) month period or portion thereof ending on December 31 of each year as currently used by the Tribe as the fiscal year for its financial statements.

“Furnishings and Equipment” shall mean all furniture, furnishings and equipment required for the operation of the Enterprise in accordance with the standards set forth in this Agreement, including, without limitation:

- (i) cashier, money sorting and money counting equipment, surveillance and communication equipment, and security equipment;
- (ii) Gaming Equipment;
- (iii) office furnishings and equipment;
- (iv) specialized equipment necessary for the operation of any portion of the Enterprise for accessory purposes, including equipment for kitchens, laundries, dry cleaning, cocktail lounges, restaurants, public rooms, commercial and parking spaces, and recreational facilities;
- (v) hotel equipment (to the extent a hotel is included in the Enterprise); and
- (vi) all other furnishings and equipment hereafter located and installed in or about the Facility which are used in the operation of the Enterprise.

“Gaming” shall mean any and all activities defined as Class II and Class III Gaming.

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"Gaming Equipment" shall mean equipment permitted under the IGRA for Gaming, including without limitation slot machines, video games of chance, table games, keno equipment and other Class II and Class III Gaming equipment.

"Gaming Ordinance" shall mean the gaming ordinance adopted by the Tribe and approved by the NIGC pursuant to which the Hopland Gaming Commission will regulate Gaming at the Facility.

"General Manager" shall mean the most senior executive responsible for directing the operation of the Enterprise. This shall be the person employed by the Manager to oversee day-to-day operations of the Enterprise who shall report to the Business Board as directed and who shall have experience in the operation, maintenance, and accounting of gaming facilities and such other businesses as might be part of the Enterprise.

"Generally Accepted Accounting Principles" or "GAAP" shall mean as of any date of determination, accounting principles set forth as generally accepted in the United States of America in currently effective opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and in statements of the Financial Accounting Standards Board or the Governmental Accounting Standards Board, as applicable, together with interpretive rulings and bulletins issued in connection therewith. The term "consistently applied," as used in connection therewith, means that the accounting principles applied are consistent in all material respects to those applied at prior dates or for prior periods.

"Governmental Approvals" means any required approvals for a particular action or event which must be obtained from the federal government, the State or the Tribe, or from any instrumentality or agency or commission of the federal government, the State or the Tribe.

"Governmental Authority" means (a) any federal, tribal, state, county or municipal government, or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, (c) any court, administrative tribunal or public utility, or (d) any arbitration tribunal or other non-governmental authority to whose jurisdiction a Person has consented.

"Gross Gaming Revenue (Win)" shall mean the net win from gaming activities which is the difference between gaming wins and losses before deducting costs and expenses.

"Gross Revenues" shall mean all revenues of any nature derived directly from the Enterprise including, without limitation, Gross Gaming Revenue (Win), food and beverage sales and other rental or other receipts from lessees, sublessees, licensees and



concessionaires (but not the gross receipts of such lessees, sublessees, licensees and concessionaires provided that such lessees, sublessees, licensees and concessionaires are not Affiliates or Insiders of Manager), and revenue recorded from Promotional Allowances, but excluding any Permitted Taxes.

“Guaranty” means the guarantee of the obligations of Manager to the Tribe, executed by Ellis Gaming LLC for the benefit of the Tribe, in form attached hereto as Exhibit B.

“Hopland Gaming Commission” or “HGC” shall mean the Hopland Gaming Commission created pursuant to the Gaming Ordinance, which regulates the Class II and Class III Gaming of the Tribe in accordance with the Compact, the IGRA and the Gaming Ordinance.

“House Bank” shall mean the amount of cash, chips, tokens and plaques that Manager from time to time determines necessary to have at the Facility daily to meet its cash needs.

“IGRA” shall mean the Indian Gaming Regulatory Act of 1988, PL 100-497, 25 U.S.C. Section 2701 et seq. as it may from time to time be amended.

“Insider” shall mean any manager, officer or person in control of the Manager, any partnership in which the Manager is a general partner, any general partner of the Manager, any affiliate of the Manager, any Insider of an affiliate of the Manager or any managing agent of the Manager and shall include persons or entities that become Insiders after the date of this Agreement, whether as the result of a merger, acquisition, restructuring or otherwise.

“Interest Rate” shall mean a rate not to exceed

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“Internal Control Systems” shall mean the systems described in Section 3.23.

“Legal Requirements” shall mean any and all present and future judicial, administrative, and tribal rulings or decisions, and any and all present and future federal, state, local and tribal laws, ordinances, rules, regulations, permits, licenses and certificates, applicable to the Tribe, Manager, the Existing Facility Site, the Facility and the Enterprise, including without limitation, the IGRA, the Compact, and the Gaming Ordinance.

“Limited Recourse” shall mean that all Loans and all liabilities of the Tribe under or related to the Enterprise or the Hopland Gaming Commission, and any related awards, judgments or decrees, shall be payable solely out of the Collateral and shall be a limited

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recourse obligation of the Tribe, with no recourse to any other tribal assets. In no event shall Manager or the Senior Financing Lender have recourse to (a) the physical property of the Facility (other than Furnishings and Equipment subject to any corresponding security interest securing financing for the Furnishings and Equipment), (b) Tribal Distributions, (c) assets of the Tribe purchased with Tribal Distributions, (d) revenues or assets of any other gaming facility or business developed and/or operated by the Tribe, or (e) any other asset of the Tribe.

"Loans" shall mean [redacted], the Ellis Loan, and the Senior Financing Loan. b:1

"Management Agreement" shall mean this Agreement and may be referred to herein as the "Agreement".

"Management Fee" shall mean the management fee described in Section 5.1.

"Manager" shall mean Ellis Gaming Hopland Management, LLC, a Nevada limited liability company.

"Manager Event of Default" has the meaning described in Section 10.2.

"Manager Internal Expenses" shall mean Manager's corporate overhead, including without limitation salaries and benefits of any of Manager's officers and employees, whether or not they perform services for the Enterprise, and any travel or other expenses of Manager, employees of Manager, and Manager's Employees.

"Managing Officer" shall mean the person designated by Manager to serve as a liaison between the Manager and the Tribe.

"Manager's Employees" shall have the meaning described in Section 3.9(c).

"Marks" means all trade names, trade marks and service marks used by the Facility or the Enterprise.

"Material Breach" means a failure of either party to perform any material duty or obligation on its part, if such party fails to (i) cure the specified payment default specified under subsection 10.2(a) within ten (10) days following receipt of the notice provided under Section 17.3; (ii) cure any other specified default within thirty (30) days following receipt of the notice provided under Section 17.3, or (iii) if such other default is not capable of being cured within 30 days, commences such cure within 30 days, proceeds diligently to complete the cure, and completes the cure no later than 90 days after receipt of such notice. Without limitation, to the extent that applicable Legal Requirements

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require cure period(s) shorter than the time periods set forth above, the cure period(s) prescribed by Legal Requirements shall at all times govern and control.

“Member of the Tribe’s Government” shall mean any member of the Tribal Council, the Hopland Gaming Commission or any independent board or body created to oversee any aspect of Gaming.

“Minimum Balance” shall mean the amount described in subsection 4.1(a).

“Minimum Guaranteed Monthly Payment” shall mean the payment due the Tribe with respect to the Facility for each month commencing in the month after the Effective Date occurs for the Facility, payable in accordance with 25 U.S.C. Section 2711(b)(3) and Section 5.7 hereof.

“Minimum Guaranteed Payment Advances” shall have the meaning set out in Section 5.8 and shall be subject to repayment to the limited extent provided in that section.

“Monthly Distribution Payment” shall have the meaning set forth in Section 5.6.

“National Indian Gaming Commission” or “NIGC” means the commission established pursuant to 25 U.S.C. Section 2704.

“Net Revenues” shall mean the sum of “Net Revenues (gaming)” and “Net Revenues (other)”.

“Net Revenues (gaming)” shall mean the Gross Gaming Revenue (Win), of the Enterprise from Class II or Class III gaming less all gaming related Operating Expenses, excluding the Management Fee, and less the retail value of any Promotional Allowances, and less the following revenues actually received by the Enterprise and included in Gross Revenues:

- (i) any gratuities or service charges added to a customer’s bill;
- (ii) any credits or refunds made to customers, guests or patrons;
- (iii) any sums and credits received by the Enterprise for lost or damaged merchandise;
- (iv) any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges received from patrons and passed on to a governmental or quasi governmental entity, including without limitation any Permitted Taxes;

(v) any proceeds from the sale or other disposition of furnishings and equipment or other capital assets;

(vi) any fire and extended coverage insurance proceeds other than for business interruption;

(vii) any condemnation awards other than for temporary condemnation; and

(viii) any proceeds of financing or refinancing.

It is intended that this provision be consistent with 25 U.S.C. Section 2703(9).

“Net Revenues (other)” shall mean all Gross Revenues of the Enterprise from all other sources in support of Class II or Class III gaming not included in “Net Revenues (gaming),” such as food and beverage, hotel, entertainment and retail (in each case, only to the extent such Gross Revenues are derived from activities included in the Enterprise, in accordance with the definition thereof), less all Operating Expenses, excluding the Management Fee and less the retail value of Promotional Allowances, if any, and less the following revenues actually received by the Enterprise and included in Gross Revenues:

(i) any gratuities or service charges added to a customer’s bill;

(ii) any credits or refunds made to customer, guests or patrons;

(iii) any sums and credits received by the Enterprise for lost or damaged merchandise;

(iv) any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges received from patrons and passed on to a governmental or quasi governmental entity, including without limitation any Permitted Taxes;

(v) any proceeds from the sale or other disposition of furnishing and equipment or other capital assets;

(vi) any fire and extended coverage insurance proceeds other than for business interruption;

(vii) any condemnation awards other than for temporary condemnation; and

(viii) any proceeds of financing or refinancing.



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It is intended that this provision be consistent with 25 U.S.C. Section 2703(9).

“NIGC Approval” means the written approval by the NIGC of this Agreement.

“Operating Budget and Annual Plan” shall mean the operating budget and plan described in Section 3.14.

“Operating Expenses” shall mean all expenses of the operation of the Enterprise, pursuant to GAAP, excluding Manager Internal Expenses and the Management Fee and including but not limited to the following:

- (i) the Compensation of Enterprise Employees;
- (ii) Operating Supplies and materials for the Enterprise;
- (iii) utilities;
- (iv) repairs and maintenance of the Facility (excluding Capital Replacements);
- (v) interest on the Loans and all other loans or capital leases pertaining to the Facility and the Enterprise;
- (vi) interest on installment contract purchases or other interest charges on debt approved by the Business Board;
- (vii) insurance and bonding;
- (viii) advertising and marketing, including  
- (ix) accounting, audit, consulting, legal and other professional fees;
- (x) security costs incurred pursuant to a budget approved by the Business Board;
- (xi) HGC costs as set forth in Section 3.10;
- (xii) operating lease payments for Furnishings and Equipment, and capital lease payments properly expensed under GAAP;
- (xiii) trash removal;

(xiv) cost of goods sold at the Facility;

(xv) other expenses designated as Operating Expenses in accordance with the accounting standards as referred to in subsection 4.3(c);

(xvi) expenses specifically designated as Operating Expenses in this Agreement;

(xvii) depreciation and amortization of the Facility based on <sup>4</sup> and depreciation and amortization of all other assets in accordance with GAAP;

(xviii) recruiting and training expenses;

(xix) fees due to the NIGC under the IGRA;

(xx) charges, assessments, fines or fees imposed by governmental entities of the Tribe which are reasonably related to the cost of Tribal governmental regulation of public health, safety or welfare, or the integrity of Tribal gaming operations, to the extent permitted under Section 7.2;

(xxi) any required payments to or on behalf of the State, any local governments made by or on behalf of the Enterprise or the Tribe pursuant to the Compact or any related consent decree, or pursuant to any agreement with the State or any county or local government;

(xxii) any budgeted charitable contributions by the Enterprise for the benefit of charities located or providing services in the vicinity of the Existing Facility Site;

(xxiii) any lawful sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges received from patrons and passed on to a governmental or quasi governmental entity, including without limitation Permitted Taxes; and

(xxiv) reasonable expenses of the Business Board, which shall include reasonable compensation to the Tribe's representatives but not to the Manager's representatives.

"Operating Supplies" shall mean food and beverages (alcoholic and nonalcoholic) and other consumable items used in the operation of a casino, such as playing cards,

tokens, chips, plaques, dice, fuel, soap, cleaning materials, matches, paper goods, stationary and all other similar items.

"Permitted Taxes" shall mean taxes, fees, assessments or other charges imposed by the Tribe that are permitted under Section 7.2.

"Promotional Allowances" shall mean the retail value of complimentary food, beverages, merchandise, and tokens for gaming, provided to patrons as promotional items.

"Relative" shall mean an individual residing in the same household who is related as a spouse, father, mother, son or daughter.

"Senior Financing" or "Senior Financing Loan" shall mean any loan, loans or equipment leases from a party other than Manager.

"Specific Performance Restriction" shall mean that no arbitrator or court shall have the power to compel, overturn, negate or in any manner modify any Tribal Governmental Action; but such restriction shall not prevent an arbitrator from determining that the taking of any Tribal Governmental Action or the failure to take any Tribal Governmental Action, which is not caused by a breach of the Manager's obligations under the this Agreement, constitutes a breach of this Agreement by the Tribe or the impairment of rights of the Manager under this Agreement; and which therefore results in liability on the part of the Tribe for damages in favor of the Manager as provided in this Agreement ~~and enforcement of the obligations of the Tribe to the Manager, including any security agreements and collateral instruments, in accordance with their terms.~~

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June 6, 2006

"State" shall refer to the State of California.

"Term" shall mean the term of this Agreement as described in Section 2.2.

"Tribal Council" shall mean the tribal body created pursuant to the Constitution and other laws and regulations of the Tribe (as applicable), which has the power to enter into this Agreement on behalf of the Tribe.

"Tribal Distribution" shall mean any payment owed to or received by the Tribe pursuant to or in connection with this Agreement, the Consulting Agreement or the Guaranty, including but not limited to Monthly Distribution Payments, Minimum Guaranteed Monthly Payments and any other payments owed to or received by the Tribe from the Enterprise.

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"Tribal Governmental Action" means any resolution, ordinance, statute, regulation, order or decision of the Tribe or any instrumentality or agency of the Tribe, regardless of how constituted, that has the force of law.

"Tribe Event of Default" has the meaning described in Section 10.1.

## **ARTICLE 2      ENGAGEMENT OF MANAGER; COMPLIANCE**

In consideration of the mutual covenants contained in this Agreement, the parties agree and covenant as follows:

**2.1      Engagement of Manager.** The Tribe hereby retains and engages Manager as the exclusive manager of the Enterprise pursuant to the terms and conditions of this Agreement, and Manager hereby accepts such retention and engagement, subject to receipt of all necessary regulatory approvals.

**2.2      Term.** The term of this Agreement shall begin on the Effective Date and unless earlier terminated in accordance with its terms, shall continue for        years. 64

**2.3      Status of Existing Facility Site.** The Tribe will maintain the Existing Facility Site throughout the Term as land held in trust by the United States of America for the benefit of the Tribe, eligible as a location upon which Gaming can occur. The Tribe covenants, during the term hereof, that Manager shall and may peaceably have complete access to and presence in the Facility in accordance with the terms of this Agreement, free from interference, eviction and disturbance by the Tribe or by any person or entity; provided, however, that such right of access to and presence in the Facility shall cease upon the termination of this Agreement pursuant to its terms or upon lawful order or direction by a Governmental Authority.

**2.4      Manager Compliance with Law; Licenses.** Manager covenants that it will at all times comply with Legal Requirements, including the Gaming Ordinance, the IGRA, the Compact, State statutes (to the extent applicable, if any), and any licenses issued under any of the foregoing.

**2.5      Compliance with Compact.** The parties shall at times comply with the provisions of the Compact.

**2.6      Fire and Safety.** Manager shall ensure that the Facility shall be constructed and maintained in compliance with all local and State fire and safety statutes, ordinances, and regulations which would be applicable if the Facility were located outside of the jurisdiction of the Tribe, notwithstanding the legal preemption of such statutes, ordinances and regulations at the Facility. Nothing in this Section shall grant any jurisdiction to the State or any political subdivision thereof over the Existing Facility

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Site. The Tribe shall be responsible for arranging fire protection and police services for the Facility, the cost of which shall be an Operating Expense.

**2.7 Compliance with the National Environmental Policy Act.** With the assistance of Manager, the Tribe shall supply the NIGC with all information necessary for the NIGC to comply with any regulations of the NIGC issued pursuant to the National Environmental Policy Act ("NEPA").

**2.8 Commencement Date.** Manager shall memorialize the Commencement Date in a writing signed by Manager and delivered to the Tribe and to the Chairman of the NIGC.

### **ARTICLE 3 BUSINESS AND AFFAIRS OF THE ENTERPRISE**

**3.1 Manager's Authority and Responsibility; Tribe's Sole Proprietary Interest in Enterprise.** Manager shall conduct and direct all business and affairs in connection with the day-to-day operation, management and maintenance of the Enterprise and the Facility, including the establishment of operating days and hours. It is the parties' intention that the Enterprise be open 24 hours daily, seven (7) days a week. Manager is hereby granted the necessary power and authority to act in order to fulfill all of its responsibilities under this Agreement. Nothing herein grants or is intended to grant Manager a titled interest to the Facility or to the Enterprise. Manager hereby accepts such retention and engagement. The Tribe shall have the sole proprietary interest in and ultimate responsibility for the conduct of all Gaming conducted by the Enterprise, subject to the rights and responsibilities of Manager under this Agreement. Manager shall have no authority to waive or impair the Tribe's sovereign immunity.

**3.2 Duties of Manager.** In managing, operating, maintaining and repairing the Enterprise and the Facility, under this Agreement, Manager's duties shall include, without limitation, the following:

(a) **Physical Duties.** Manager shall use reasonable measures for the orderly physical administration, management, and operation of the Enterprise and the Facility, including without limitation, cleaning, painting, decorating, plumbing, carpeting, grounds care and such other maintenance and repair work as is reasonably necessary.

(b) **Compliance with Tribe Ordinances.** Manager shall comply with all duly enacted statutes, regulations and ordinances of the Tribe.

(c) **Required Filings.** Manager shall comply with all applicable provisions of the Internal Revenue Code including, but not limited to, the prompt filing of any cash transaction reports and W-2G reports that may be required by the Internal Revenue Service of the United States or under the Compact.



(d) [Intentionally Omitted].

(e) Restructuring of Existing Indebtedness of Tribe. At the request of the Tribe, Manager shall advise and assist Tribe in its efforts to restructure existing debt with [ ] Manager also agrees to loan or cause to be loaned up to [ ] to the Tribe for renovations and capital improvements at the Facility ("Ellis Loan"). The Ellis Loan shall have a rate not to exceed the Interest Rate and shall be subordinate to and repaid after repayment of the existing debt to [ ]

### **3.3 Business Board.**

(a) Formation, Terms and Powers. Manager and the Tribe agree to create a Business Board comprised of an equal number of persons representing and designated by the Tribe and the Manager. Unless otherwise agreed by the Tribe and the Manager, the Business Board shall have six (6) members, three (3) of which have been designated and selected by the Tribe, and three (3) of which have been designated and selected by the Manager. Except as expressly reserved to the Tribal Council in this Agreement, the Business Board, upon its creation, shall have the power of the Tribe to instruct and direct the Manager as provided in this Agreement. No Manager's Employees shall serve on the Business Board. Each Business Board member shall serve for at least two (2) consecutive years. Each Business Board member shall have an initial term of three (3) years and may be appointed for a second additional term of three (3) years. Any party may change one of its representatives to the Business Board only once per Fiscal Year and must give written notice of the new appointed representative at least 90 days prior to the change. Any member of the Business Board may designate another person to exercise authority as a member by written notice signed by such Business Board member and given in accordance with Section 17.3 of this Agreement. The Business Board shall remain active during the entire term of this Agreement. Within thirty (30) days following execution of this Agreement, each party shall give the other notice of the individuals initially designated by each to serve on the Business Board.

(b) Board Actions. The Business Board shall have the obligations, rights and powers described in this Agreement. In order to be effective, any action of the Business Board must be the result of mutual agreement of at least four (4) Business Board members or their designees, three (3) of whom must be the members appointed by the Tribal Council, at a meeting at which at least five (5) Business Board members or their designees are present; or, in the event of action by written consent, by consent signed by all three (3) Tribe Representatives (or their designees) and at least one Manager Representative (or his/her designee).

(c) Board Deadlock. In the event the Business Board cannot come to a mutual agreement on an emergency material issue and is deadlocked for at least fifteen (15) days ("Deadlocked Issue"), the proposed action shall be subject to binding arbitration as set forth in Article 12 but as modified in this subsection (c). On any issue not viewed by the Board to be an emergency material issue, the deadlock period shall be increased to 30 days. Following the applicable deadlock period, either party may give notice of submitting the Deadlocked Issue to arbitration. Within fifteen (15) days, an arbitrator shall be appointed. The matter shall then be decided by the arbitrator pursuant to an expedited arbitration process within thirty (30) days. During any such arbitration process concerning a Deadlocked Issue, the parties will not change any representatives to the Business Board.

(d) Reporting. The Business Board shall report on the operations of the Enterprise to the Tribal Council at least monthly.

(e) Compensation. The compensation of the Tribe Representatives shall be agreed upon by the Business Board and such compensation shall be an Operating Expense.

**3.4 Manager's Contractual Authorization; Contracts in Tribe's Name Doing Business as the Enterprise and at Arm's Length.** Manager is authorized to make, enter into and perform in the name of the Tribe doing business as the Enterprise, such contracts deemed necessary by Manager to perform its obligations under this Agreement, provided such contracts comply with the terms and conditions of this Agreement, including, but not limited to, this Section 3.4, and provided such contracts do not obligate the Enterprise to pay sums not approved in the Operating Budget and Annual Plan or the Capital Budget. Contracts for the operations of the Enterprise shall be entered into in the name of the Enterprise, and signed by the General Manager. Any contract, excluding contracts for capital expenditures identified in the Capital Budget, requiring an expenditure in any year in excess of \_\_\_\_\_ or such higher amount as may be set by the Tribal Council, shall be approved by the Business Board; such approval shall not be required for employment or other contracts which may include aggregate payments in excess of \_\_\_\_\_ but which do not require an expenditure of more than \_\_\_\_\_ in any year. Neither the Tribe nor the Enterprise shall enter into any transaction of any kind with any Affiliate or Insider of the Manager other than transactions on terms at least as favorable to the Enterprise as would be the case in an arm's length transaction between unrelated parties of equal bargaining power, the terms of which are disclosed to the Business Board in writing and approved thereby, such approval not to be unreasonably withheld, delayed or conditioned. Nothing contained in this Section 3.4 shall be deemed to be or constitute a waiver of the Tribe's sovereign immunity.

**3.5 Enterprise Operating Standards.** Manager shall use its best efforts to operate the Enterprise in a proper, efficient and competitive manner in accordance with operating standards which are consistent with the highest operating standards of the casino, hospitality and resort industries.

**3.6 Security.** Manager shall provide for appropriate security for the operation of the Enterprise. All aspects of the Facility's security shall be the responsibility of Manager except for surveillance, which shall be the responsibility of the HGC. Any security officer shall be bonded and insured in a commercially reasonable amount commensurate with his or her enforcement duties and obligations. The cost of any charge for security and increased public safety services will be an Operating Expense.

**3.7 Damage, Condemnation or Impossibility of the Enterprise.** If Facility is damaged, destroyed or condemned so that continued development, construction or operation of Gaming cannot be or can no longer be continued at the Facility, the Facility shall at the Tribe's option be reconstructed if the insurance or condemnation proceeds, together with any other funds available to the Tribe, are sufficient to restore or replace the Facility to a condition at least comparable to that before the casualty occurred or such other condition as Manager and the Tribe may agree. If the insurance proceeds, together with other funds available to the Tribe, are not sufficient to so restore or replace the Facility or are not used to repair the Facility, the Tribe shall, with the assistance of Manager, adjust and settle any and all claims for such insurance proceeds or condemnation awards, and such proceeds or awards and any undistributed Net Revenues pursuant to Article 5 hereof shall be applied first to the amounts due under the Loans other than the Ellis Loan; second to the Ellis Loan; third to pay any third party liabilities of the Enterprise; fourth to any amounts owed to Manager; and fifth to the Tribe; but subject, in each case, to any applicable subordination agreements.

**3.8 Alcoholic Beverages and Tobacco Sales.** During the term of this Agreement alcoholic beverages will be served at the Facility if permissible in accordance with applicable law. Tobacco may be sold at the Facility subject to and in accordance with applicable licensing requirements, if any.

**3.9 Employees.**

(a) **Manager's Responsibility.** Manager shall have, subject to the terms of this Agreement and with oversight by the Business Board, the exclusive responsibility and authority to direct the selection, control and discharge of all employees performing regular services for the Enterprise in connection with the maintenance, operation, and management of the Enterprise and the Facility and any activity upon the Existing Facility Site; and the sole responsibility for determining whether a prospective employee is qualified and the appropriate level of Compensation to be paid, except that the Gaming

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Commission shall have the exclusive right to determine licensing qualifications. At the request of the Tribe, Manager shall provide specific training and "mentoring" to employees of the Enterprise as more particularly set forth herein, including, without limitation, implementation of Manager's proprietary "S.T.E.P.P." program.

(b) Enterprise Employee Policies. Manager shall prepare a draft of personnel policies and procedures (the "Enterprise Employee Policies"), including a job classification system with salary levels and scales, which policies and procedures shall be subject to approval by the Business Board. Enterprise employees are employed on an "at-will" basis and, unless expressly stated otherwise, nothing contained in this Agreement or the Enterprise Employee Policies shall be construed to affect the "at-will" nature of employment with the Enterprise. The Enterprise Employee Policies shall include a grievance procedure in order to establish fair and uniform standards for the Enterprise employees, which will include procedures for the resolution of disputes between the Enterprise and Enterprise employees. At a minimum, the Enterprise Employee Policies shall provide for an employee grievance process which provides the following: A written "Board of Review" process will be created by the Enterprise's general manager to provide Enterprise employees with a procedure for bringing grievances involving substantial work related issues to the attention of Enterprise management so they may be promptly and permanently resolved in a fair and equitable manner. The Board of Review process will be available to all Enterprise employees except: (i) job applicants, temporary employees, and part-time employees; (ii) employees at the director level and above; and (iii) employees discharged for actions involving violations of tribal law, including tribal gaming regulations, or federal, state, or local law. Enterprise employees will be eligible to use the Board of Review process if they have: (A) completed their probationary employment period as defined in the Enterprise Employee Policies; (B) concluded all required preliminary procedures before seeking a Board of Review hearing; (C) completed a Board of Review hearing request form; and (D) submitted the hearing request form within the allotted time frame to the Enterprise human resources department and a copy to the head of their home department in the Enterprise. The Enterprise's human resources department shall be responsible for determining the composition of the hearing panel, for establishing hearing rules and procedures, in each case subject to the provisions of the Enterprise Employee Policies, and for providing an interpreter, as necessary, for Tribal members employed by the Enterprise and who fulfill the eligibility criteria to use the Board of Review process. The Board of Review will be empowered to make a range of decisions necessary to fully resolve the grievance, including reinstatement (with or without backpay) or upholding the employee's discharge. The Board of Review's decision on the grievance will be final and binding for the employee and the Enterprise, and there will be no appeal beyond the Board of Review except as may be expressly provided in the Enterprise Employee Policies. Manager shall be responsible for administering the Enterprise Employee

Policies. Any amendments to the Enterprise Employee Policies must be consistent with this subsection and shall not be effective unless they are approved by the Business Board. If the Business Board for any reason declines to meet to discuss a proposed amendment, after not less than twenty (20) days written notice of any such amendment, the Business Board shall be deemed to have consented to such amendment.

(d) Senior Employees. The selection of the Chief Financial Officer, Casino Manager, and Human Resources Manager for the Facility or the functionally equivalent positions, shall be subject to approval by the Business Board.

(e) Enterprise Employees. The terms of employment of all Enterprise Employees shall be structured as though all labor, employment, and unemployment insurance laws applicable in the State which would apply to Enterprise Employees if they were not working on tribal trust land would also apply to Enterprise Employees; except that no state tax not otherwise applicable on tribal trust land shall not be applicable and except that the Tribe reserves the right to by ordinance establish a workman's compensation trust fund and worker's compensation system instead of adopting State workers compensation law, and to adopt other laws and regulations that might preempt otherwise applicable law.

(f) Removal of Employees. Manager will act in accordance with the Enterprise Employee Policies with respect to the discharge, demotion or discipline of any Enterprise Employee.

(g) Employees of the Tribe. All Enterprise Employees shall be employees of the Tribe, except for those employees identified in Section 3.9(c) hereof.

(h) Manager Employees and Related Expenses. No Manager Internal Expenses shall be paid by the Enterprise; all Manager Internal Expenses shall be assumed by Manager and the Management Fee is intended to be full and complete compensation to Manager for all Manager Internal Expenses. No officer, director, shareholder or employee of Manager shall be compensated by wages from or contract payments by the

Enterprise for their efforts or for any work which they perform under this Agreement. Manager shall not receive any payments from the Enterprise other than the Management Fee to be paid to Manager under Section 5.1.

(i) HGC Employees. Manager shall not hire any persons to work at the Facility who are employees of, or whose employment would be a conflict with, the HGC.

**3.10 HGC and Governmental Costs.** Subject to the annual cap on expenses set forth herein, the funding of the operation of the HGC shall be an Operating Expense. The HGC costs, including surveillance and other costs detailed below, shall not exceed a cap of \_\_\_\_\_ per Fiscal Year (not including capital improvements to the surveillance system). This cap shall not be increased more than ten percent (10%) annually on each anniversary of the Commencement Date; any increases above 10% must be approved by the Business Board. In addition to covering the HGC costs and surveillance, the above-referenced annual cap of \_\_\_\_\_ also includes the reasonable costs related to the Tribe's governmental expenses in overseeing the Facility and the operation of the Enterprise. These other costs include, but are not limited to, tribal police, fire and judicial expenses of the Tribe ("Governmental Costs"). Together, the HGC costs and the Governmental Costs shall not exceed the cap set forth herein and shall be deemed as Operating Expenses. The budget for the HGC and for Governmental Costs shall reflect the reasonable cost of regulating and servicing the Enterprise, including surveillance, and shall be subject to approval of and regular review by the Tribal Council. The decisions and actions of the HGC as to Manager shall be subject to the provisions of Article 12 hereof, including without limitation the Specific Performance Restriction. The Governmental Costs also shall be subject to review and approval by the Business Board.

**3.11 Employee and Manager Background Checks.** A background investigation shall be conducted by the HGC in compliance with all Legal Requirements, to the extent applicable, on each applicant for employment and on Manager as soon as reasonably practicable. No individual whose prior activities, criminal record, if any, or reputation, habits and associations are known to pose a threat to the public interest, the effective regulation of Gaming, or to the gaming licenses of Manager, or to create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of Gaming, shall knowingly be employed by Manager or the Tribe. The background investigation procedures employed by the HGC shall satisfy all regulatory requirements independently applicable to Manager. Any cost associated with obtaining such background investigations shall constitute an Operating Expense; provided, however, the costs of background investigations relating to Manager, and the shareholders, officers, directors or employees of Manager, Manager or their Affiliates shall be borne solely by Manager, shall be nonrefundable, shall not be treated as part of any Loan or as Operating Expenses of the Enterprise.

**3.12 Indian Preference.** In order to maximize benefits of the Enterprise to the Tribe, Manager shall, during the term of this Agreement, to the maximum extent reasonably possible under applicable law, including, but not limited to the Indian Civil Rights Act, 25 U.S.C. Section 1301, et seq., give preference in recruiting, training and employment to qualified members of the Tribe, their spouses, and children in all job categories of the Enterprise, including senior management. Manager shall abide by any duly enacted tribal preference law, including preference in hiring and in contracting, and shall budget adequate resources for instituting tribal training programs. Manager's obligations in this respect shall include, but not be limited to, the following: (i) Manager shall conduct job fairs and skills assessment meetings for Tribe members; (ii) in consultation with and subject to the approval of the Tribe, Manager shall develop a management training program for Tribe members or people selected by the Tribe, which shall be structured to provide appropriate training for those participating to assume, to the greatest extent possible, full managerial control at the conclusion of the Term of this Agreement; and (iii) within six months of the Commencement Date, Manager shall develop and present to the Tribe for its approval, a training plan designed to reasonably attempt to ensure that, by the end of the Term of the Agreement, all senior management of the Enterprise will potentially be Tribe members or others designated by the Tribe. Manager shall also give preference, in granting contracts for the supply of goods and services for the Enterprise, to qualified companies owned and controlled by the Tribe, or to qualified companies which are both controlled by members of the Tribe and are majority owned by members of the Tribe, provided that all bid and proposals are otherwise equal.

**3.13 Final Determination.** Final determination of the qualifications for employment of all persons, including Tribe members, and final determination of the qualification of all vendors, including companies owned by the Tribe and Tribe members, shall be made by Manager with approval from the Business Board, subject to any licensing requirements of the HGC.

**3.14 Operating Budget and Annual Plan.** Prior to the scheduled Commencement Date, Manager shall submit to the Business Board for its approval a proposed Operating Budget and Annual Plan for the Fiscal Year commencing on the Effective Date. Thereafter, Manager shall, not less than thirty (30) days prior to the commencement of each full or partial Fiscal Year, submit to the Business Board for its approval a proposed Operating Budget and Annual Plan for the Facility for the ensuing full or partial Fiscal Year, as the case may be. The Operating Budget and Annual Plan shall include a projected income statement and projection of cash flow for the Enterprise, with the assumptions used therein. The Operating Budget and Annual Plan shall include, without limitation, a business and marketing plan for the Fiscal Year, and the Minimum Balance which must remain in the Enterprise Accounts and the House Bank as of the end

of each month during the Fiscal Year to assure sufficient monies for working capital purposes, and detail of other expenditures proposed to be authorized under the Operating Budget and Annual Plan.

The Operating Budget and Annual Plan for the Enterprise will be comprised of the following:

(a) A statement of the estimated income and expenses for the coming Fiscal Year, including estimates as to Gross Revenues and Operating Expenses for such Fiscal Year, such operating budget to reflect the estimated results of the operation during each month of the subject Fiscal Year;

(b) Either as part of the statement of the estimated income and expenses referred to subsection 3.14(a), or separately, budgets for:

(i) repairs and maintenance;

(ii) Capital Replacements;

(iii) Furnishings and Equipment;

(iv) advertising and business promotion programs for the Enterprise, to be implemented and placed, as applicable, by Manager;

(v) the estimated cost of Promotional Allowances; and

(vi) a business and marketing plan for the subject Fiscal Year.

**3.15 Approval of Operating Budget and Annual Plan.** The Business Board's approval of the Operating Budget and Annual Plan shall not be unreasonably withheld or delayed. Manager shall meet with the Business Board to discuss the proposed Operating Budget and Annual Plan and the Business Board's approval shall be deemed given unless a specific written objection thereto is delivered to Manager within thirty (30) days after Manager and the Business Board have met to discuss the proposed Operating Budget and Annual Plan. If the Business Board for any reason declines to meet with Manager to discuss a proposed Operating Budget and Annual Plan after not less than twenty (20) days written notice, the Business Board shall be deemed to have consented unless a specific written objection is delivered to Manager within thirty (30) days after the date of the proposed meeting.

**3.16 Resolution of Disputed Items in Operating Budget and Annual Plan.** If the initial proposed Operating Budget and Annual Plan contains disputed budget item(s), the representatives of the Business Board agree to cooperate with each other in good faith



to resolve the disputed or objectionable proposed item(s). In the event that the Business Board is not able to reach mutual agreement concerning any disputed or objectionable item(s) within a period of fifteen (15) days, the matter shall be viewed as a Deadlocked Issue as set forth in Section 3.3. The same dispute resolution process set forth in Section 3.3 shall be employed for a Deadlocked Issue under this Section 3.16. If the Business Board is unable to resolve the disputed or objectionable item(s) prior to the commencement of the applicable fiscal year, the undisputed portions of the proposed Operating Budget and Annual Plan shall be deemed to be adopted and approved and the corresponding line item(s) contained in the Operating Budget and Annual Plan for the preceding fiscal year shall be adjusted as set forth herein and shall be substituted in lieu of the disputed item(s) in the proposed Operating Budget and Annual Plan. Those line items which are in dispute shall be determined by increasing the preceding fiscal year's actual expense for the corresponding line items by an amount determined by Manager which does not exceed the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, all items (2004 = 100) for the Fiscal Year prior to the Fiscal Year with respect to which the adjustment to the line item(s) is being calculated or any successor or replacement index thereto. The resulting Operating Budget and Annual Plan obtained in accordance with the preceding sentence shall be deemed to be the Operating Budget and Annual Plan in effect until such time as Manager and the Business Board have resolved the items objected to by the Business Board.

**3.17 Revisions to Operating Budget and Annual Plan.** Manager may, after notice to and approval by the Business Board, revise the Operating Budget and Annual Plan and the Capital Budget from time to time, as necessary, to reflect any unpredicted significant changes, variables or events or to include significant, additional, unanticipated items of expense. Expenditures shall not materially vary from the approved budgets nor exceed the aggregate Operating Budget and Annual Plan (as approved by the Business Board, and revised with the reasonable approval of the Business Board) absent the written consent of the Business Board; provided that the Tribe recognizes that (a) the absolute amounts of expenditures may exceed budgeted amounts if the volume of business at the Facility exceeds projections, (b) the relative amounts of income and expense may vary from budgeted amounts if the volume of business is less than projected, and (c) Manager does not guarantee the economic performance shown in budgets. Manager shall submit a revision of the Operating Budget and Annual Plan to the Business Board for review on a quarterly or other appropriate basis.

**3.18 Capital Budgets.** Manager shall, not less than thirty (30) days prior to the commencement of each fiscal year, or partial fiscal year, submit to the Business Board a recommended capital budget (the "Capital Budget") describing proposed capital expenditures for the ensuing full or partial year, as the case may be, for the physical

plant, furnishings, equipment, and ordinary capital replacement items, all of which are defined to be any items, the cost of which is capitalized and depreciated, rather than expended, using GAAP ("Capital Replacements") as shall be required to operate the Enterprise in accordance with sound business practices. Capital Replacements in the Capital Budget in an aggregate sum equal to or less than the sum of the Capital Replacement Reserve for the Fiscal Year shall be approved by the Business Board; and any amounts in excess of the Capital Replacement Reserve for the Fiscal Year shall be subject to approval of the Tribal Council in its sole discretion. The Business Board, and Manager shall meet to discuss the proposed Capital Budget and the Business Board shall be required to make specific written objections to a proposed Capital Budget in the same manner and within the same time periods specified in Section 3.16 with respect to an Operating Budget and Annual Plan. The Business Board shall not unreasonably withhold or delay consent. Manager shall be responsible for the design and installation of Capital Replacements, subject to the Business Board's approval.

**3.19 Capital Replacements.** The Tribe shall effect and expend such amounts for any Capital Replacements as shall be required, in the course of the operation of the Enterprise, to maintain, at a minimum, the Enterprise in compliance with any Legal Requirements and to comply with Manager's recommended programs for renovation, modernization and improvement intended to keep the Enterprise competitive in its market; or to correct any condition of an emergency nature, including without limitation, maintenance, replacements or repairs which are required to be effected by the HGC, which in Manager's sole discretion requires immediate action to preserve and protect the Facility, assure its continued operation, and/or protect the comfort, health, safety and/or welfare of the Facility guests or employees (an "Emergency Condition"); provided, however, that the Tribe shall be under no obligation to fund Capital Replacements in aggregate amount greater than its periodic required contributions to the Capital Replacement Reserve described in Section 3.20. Manager is authorized to take all steps and to make all expenditures from the Disbursement Accounts described in Section 4.1(c) (in the case of non-capitalized repairs and maintenance), or Capital Replacement Reserve described at Section 3.20 (in the case of expenditures for Capital Replacements), as it deems necessary to repair and correct any Emergency Condition, regardless whether such provisions have been made in the Capital Budget or the Operating Budget and Annual Plan for any such expenditures; or the cost thereof may be advanced by Manager and reimbursed from future revenues. Design and installation of Capital Replacements shall be effected in a time period and subject to such conditions as the Business Board may establish to minimize interference with or disruption of ongoing operations.

**3.20 Capital Replacement Reserve.** Manager shall establish a Capital Replacement Reserve on the books of account of the Enterprise, and the periodic contributions of cash required by Section 3.21 shall be deposited by the Enterprise into an

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account (the "Capital Replacement Reserve") established in the Enterprise's name at a bank designated by the Business Board in accordance with Section 4.1(a) of this Agreement. All amounts in the Capital Replacement Reserve shall be invested in interest bearing investments in accordance with the Enterprise Investment Policy to the extent that availability of funds, when required, is not thereby impaired. Interest earned on amounts deposited in the Capital Replacement Reserve shall be credited to the Capital Replacement Reserve and shall be available for payment of expenditures for Capital Replacements to the Facility. Manager shall draw on the Capital Replacement Reserve for Capital Replacements to purchase those items included in the Capital Budget approved by the Business Board or such emergency additions, repairs or replacements as shall be required to correct an Emergency Condition.

**3.21 Periodic Contributions to Capital Replacement Reserve.** In accordance with subsection 5.6(c) of this Agreement, Manager shall make monthly deposits into the Capital Replacement Reserve in amounts equivalent to an annual rate of        of Gross Revenues during        after the Commencement Date, and equivalent to an annual rate of        of Gross Revenues thereafter over the remainder of the Term; such reserve shall be funded out of Monthly Distribution Payments. The cash amounts required to be so deposited shall be calculated and deposited into the Capital Replacement Reserve, in arrears, no later than the twenty-first (21st) day of the month immediately following the month with respect to which a deposit is made. If any adjustment of Gross Revenues is made as result of an audit or for other accounting reasons, a corresponding adjustment in the Capital Replacement Reserve deposit shall be made. In addition, all proceeds from the sale of capital items no longer needed for the operation of the Enterprise, and the proceeds of any insurance received in reimbursement for any items previously paid from the Capital Replacement Reserve, shall be deposited into the Capital Replacement Reserve upon receipt. 14

**3.22 Use and Allocation of Capital Replacement Reserve.** Any expenditures for Capital Replacements which have been budgeted and previously approved may be paid from the Capital Replacement Reserve without further approval from the Business Board. Any amounts remaining in the Capital Replacement Reserve at the close of any year shall be carried forward and retained in the Capital Replacement Reserve until fully used. If the amounts in the Capital Replacement Reserve at the end of any year plus the anticipated contributions to the Capital Replacement Reserve for the next ensuing year are not sufficient to pay for Capital Replacements authorized by the Capital Budget for such ensuing year, then additional funds, in the amount of the projected deficiency, may be advanced by the Manager and reimbursed by the Enterprise from future revenues.

**3.23 Internal Control Systems.** Manager shall install systems for monitoring of all funds (the "Internal Control Systems"), which systems shall comply with all Legal Requirements, including any minimum internal control standards promulgated by the

NIGC, and shall be submitted to the Business Board and the HGC for approval in advance of implementation, which approval shall not be unreasonably withheld. The Tribe shall retain the right to review all Internal Control Systems and any changes instituted to the Internal Control Systems of the Enterprise consistent with Legal Requirements and any minimum internal control standards promulgated by the NIGC. The Tribe shall have the right to retain an auditor to review the adequacy of the Internal Control Systems; such cost shall be an Operating Expense. Any significant changes in such systems after the Commencement Date also shall be subject to review and approval by the HGC. The HGC and Manager shall have the right and duty to maintain and police the Internal Control Systems in order to prevent any loss of proceeds from the Enterprise. The HGC shall have the right to inspect and oversee the Internal Control System at all times and shall be responsible for the surveillance system.

**3.24 Retail Shops and Concessions.** The Manager shall determine the specific type or types of shops or concessions to be authorized for inclusion in the Facility; subject to approval by the Business Board.

**3.25 Agreed Ceiling for Repayment of Development and Construction Costs.** The Facility is already in existence and there are no plans for expansion that would significantly change the current footprint of the Facility. Any changes will be limited to internal renovations and similar improvements to the Facility. Currently, the Tribe has existing debt through \_\_\_\_\_ in the total amount of approximately \_\_\_\_\_. As set forth in Section 3.2(e), Manager has agreed to loan or cause to be loaned up to \_\_\_\_\_ to further facilitate renovations and capital improvements at the Facility, as well as any costs of capital replacements advanced by Manager pursuant to Section 3.19. Other than these loans, there are no other loans pertinent to development and construction costs which the Tribe would be responsible for repayment. Based on the foregoing, the Tribe's total repayment obligation for development and construction costs pertinent to the Facility shall not exceed the principal amount of \_\_\_\_\_. 64

## **ARTICLE 4 BANKING AND BANK ACCOUNTS**

### **4.1 Banking and Bank Accounts.**

(a) **Enterprise Accounts.** The Business Board shall select, a bank or banks for the deposit and maintenance of funds and Manager shall establish in the name of the Enterprise such bank accounts as Manager deems appropriate and necessary in the course of business and as consistent with this Agreement, including the Cash Collateral Account and the Disbursement Accounts (the "Enterprise Accounts"). The Manager and its designees shall control the Enterprise Accounts such that only the Manager or its designees may deposit and draw funds from the Enterprise Accounts. Establishment of

any Enterprise Account shall be subject to the approval of the Business Board. The sum of money to be maintained in the Enterprise Account(s) to serve as working capital for Enterprise operations shall include all sums needed for the House Bank, and all sums needed to accrue for payment of expenses not paid on a monthly basis (the "Minimum Balance"). Manager shall propose a policy for investing funds in excess of the Minimum Balance (the "Enterprise Investment Policy"), which shall be subject to the approval of the Business Board. Manager agrees to disclose to the Tribe in writing any relationship that it and/or any of its principals, officers, or directors may have with any bank with which the Enterprise does business.

(b) Daily Deposits to Cash Collateral Account. Manager shall establish for the benefit of the Tribe in the Enterprise's name a Cash Collateral Account, which shall be subject to a lien and security interest in favor of Manager. Manager shall collect all Gross Revenues and other proceeds connected with or arising from the operation of the Enterprise, the sale of all products, food and beverage, and all other activities of the Enterprise and deposit the related cash daily into the Cash Collateral Account at least once during each 24-hour period unless otherwise agreed by the Business Board. All money received by the Enterprise on each day that it is open must be counted at the close of operations for that day or at least once during each 24-hour period. Manager agrees to ~~obtain a bonded transportation service to effect the safe transportation of the daily receipts to the bank, which expense shall constitute an Operating Expense.~~

(c) Disbursement Accounts. Manager shall establish for the benefit of the Tribe in the Enterprise's name one or more Disbursement Accounts. Manager shall, consistent with and pursuant to the approved annual Operating Budget and Annual Plan and Capital Budget, have responsibility and authority for making all payments for Operating Expenses, debt service, Management Fees, and Tribal Distributions from the Disbursement Accounts. The Tribe may establish its own account at any bank of its choosing to receive Tribal Distributions.

(d) No Cash Disbursements. Manager shall not make any cash disbursements from the Enterprise Accounts except for the payment of cash prizes from the House Bank; and except for such cash disbursements from the House Bank, any and all payments or disbursements by the Manager shall be made by check or wire transfer drawn against an Enterprise Account.

(e) Transfers Between Accounts. Manager has the authority to transfer funds from and between the Enterprise Accounts to the Disbursement Accounts in order to pay Operating Expenses and to pay debt service pursuant to the Loans, to invest funds in accordance with the Enterprise Investment Policy, and to pay the Management Fees and Tribal Distributions pursuant to this Agreement, and to make other payments required by Article 5 below.

(f) Transfers from Cash Collateral Account to Disbursement Accounts. Manager agrees that, notwithstanding any Tribe Event of Default or any other default by the Tribe, it shall make or permit timely transfers from the Cash Collateral Account to Disbursement Accounts of all funds needed to pay (a) Operating Expenses; (b) all Loans; (c) the Minimum Guaranteed Monthly Payment; and (d) maintenance of the Minimum Balance, and any other reserves approved by the Business Board with the written consent of Manager. Manager further agrees that, prior to any Tribe Event of Default, it shall make timely transfers to Disbursement Accounts to enable the Monthly Distribution Payment to be made to the Tribe when due, and otherwise in accordance with this Agreement. Upon termination or expiration of this Agreement, the Manager shall immediately so notify all banks with accounts and shall immediately transfer said accounts to Tribe such that Tribe alone shall have authority to deposit and withdraw funds.

**4.2 Insurance.** Manager, on behalf of the Tribe, shall arrange for, obtain and maintain, or cause its agents to maintain, with responsible insurance carriers licensed to do business in the State, insurance (including coverage of public liability and property loss or damage) satisfactory to Manager and the Business Board covering the Facility and the operations of the Enterprise, naming the Tribe, the Enterprise and Manager as insured parties. Manager shall recommend to the Business Board the minimum amounts of insurance coverage for the Enterprise, which shall be subject to the reasonable approval of the Tribe and shall be the greater of either (i) the minimum amounts set forth in the Compact; or (ii) the minimum amounts set forth in the Loans.

**4.3 Accounting and Books of Account.**

(a) Statements. Manager shall prepare and provide to the Tribal Council and Business Board on a weekly, monthly and annual basis, with monthly statements to include year to date statements, operating statements on behalf of the Enterprise. The operating statements shall comply with all Legal Requirements and shall include an income statement, statement of cash flows, and balance sheet for the Enterprise. Such statements shall include the Operating Budget and Annual Plan and Capital Budget projections as comparative statements, and, after the first full year of operation, will include comparative statements from the comparable period for the prior year; and shall reflect in accordance with GAAP all amounts collected and received and all expenses, deductions and disbursements made therefrom in connection with the Enterprise.

(b) Books of Account. Manager shall maintain full and accurate books of account on behalf of the Enterprise at an office in the Facility and at such other location(s) as may be determined by Manager subject to approval by the Tribe. The Business Board, HGC and other designated representatives of the Tribe shall have immediate access to the daily operations of the Enterprise and shall have the unlimited



right to access, inspect, examine, and copy all such books and supporting business records. Such rights may be exercised through the HGC or through an agent, employee, attorney, or independent accountant acting on behalf of the Tribe or the Business Board.

(c) Accounting Standards. Manager shall maintain the books and records on behalf of the Enterprise reflecting the operations of the Enterprise in accordance with GAAP and shall adopt and follow the fiscal accounting periods utilized by the Enterprise in its normal course of business (i.e., a month, quarter and year prepared in accordance with the Fiscal Year). The accounting systems and procedures shall comply with Legal Requirements and, at a minimum:

(i) include an adequate system of internal accounting controls;

(ii) permit the preparation of financial statements in accordance with GAAP;

(iii) be susceptible to audit in accordance with GAAP and all requirements of IGRA and the NIGC:

(iv) permit the calculation and payment of the Management Fee described in Article 5 below and the calculation by the Tribe and the NIGC of annual fees payable under 25 C.F.R. Section 514.1;

(v) provide for the allocation of operating expenses or overhead expenses among the Tribe, the Enterprise, and any other user of shared facilities and services; and

(vi) all monthly internal and annual audited financial statements shall show separately the Net Revenue (Gaming) and related Operating Expenses and the Net Revenue (Other) and related Operating Expenses, as well as Net Revenue and Operating Expenses for the Facility and for the entire Enterprise.

**4.4 Annual Audit.** The Tribe shall select an independent certified public accounting firm which is a "Big Four" accounting firm or an accounting firm with not less than five (5) years auditing experience with gaming enterprise operations, which firm shall perform an annual audit of the books and records of the Enterprise and of all contracts for supplies, services or concessions reflecting Operating Expenses, and shall provide such other services as the Business Board shall designate. The Tribe, the BIA and the NIGC shall also have the right to perform special audits of the Enterprise on any aspect of the Enterprise at any time without restriction. The costs incurred for such audits shall constitute an Operating Expense. Such audits shall be provided by the Tribe to all applicable federal and state agencies, as required by law, and may be used by Manager

for reporting purposes under federal and state securities laws, if required. All audited financial statements shall conform to all requirements of IGRA and the NIGC and, to the extent required by Legal Requirements, shall segregate gaming revenue and expenses from non-gaming revenue and expenses.

**4.5 Litigation.** Except for disputes between the Tribe and Manager, and claims relating to the Tribe's status as a Tribe or the trust status of the Existing Facility Site, Manager and Tribe shall bring and/or defend and/or settle any claim or legal action brought against Manager, the Enterprise or the Tribe, individually, jointly or severally, or any Enterprise Employee, in connection with the operation of the Enterprise if the basis of such claim or legal action was within the scope of Manager's authority under this Agreement; and Manager shall furnish such information regarding claims, litigation and arbitration as the Tribe may request. Manager and Tribe shall retain and supervise legal counsel, accountants and such other professionals, consultants and specialists as Manager and Tribe deem appropriate to assert or defend any such claim or cause of action. All liabilities, costs and expenses, including reasonable attorneys' fees and disbursements incurred in defending and/or settling any such claim or legal action which are not covered by insurance and which, as to Manager, relate to acts or omissions of Manager within the scope of its authority under this Agreement, shall be an Operating Expense. Nothing contained herein is a grant to Manager of the right to waive the Tribe's or the Enterprise's sovereign immunity. That right is strictly reserved to the Tribe, and shall at the option of the Tribe be asserted by the Tribe through its counsel. Any settlement of a third party claim or cause of action shall, as to any payment in excess of \_\_\_\_\_ not covered by insurance, be approved by the Tribal Council (which consent shall not be unreasonably withheld, conditioned or delayed).

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**ARTICLE 5      MANAGEMENT FEE, DISBURSEMENTS, AND OTHER PAYMENTS BY MANAGER**

**5.1 Management Fee.** Subject to the provisions of Sections 5.6 and 5.7, Manager is authorized by the Tribe to pay itself from the Enterprise Account(s), a Management Fee calculated as follows:

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**1 page has been withheld in full pursuant to  
Exemption (b)(4).**

6-1

A deduction shall be made for the Management Fee in the month following the Commencement Date, to provide a credit to the Tribe in an amount equal to

in the event that are greater than the Management Fee for such month, the excess amount shall be carried forward and credited against the Management Fee for the subsequent month or months until the full amount of such fees and expenses has been credited to the Tribe.

6-1

**5.2 Payment of Management Fee.** The Management Fee shall be payable monthly in arrears on or before the twenty-first (21<sup>st</sup>) day of the following month.

**5.3 Disbursements.** As and when received by the Enterprise, Gross Revenues shall be deposited in the Cash Collateral Account created pursuant to subsection 4.1(b) of this Agreement. There shall, in turn, be disbursed by Manager, on a monthly basis, for and on behalf of the Tribe, funds from the Enterprise Account(s) in accordance with

Section 4.1(e) of this Agreement to pay, to the extent available, Operating Expenses and, subject to the terms of Section 5.6, required deposits into the Capital Replacement Reserve for Capital Replacements. Manager will reserve funds in the Enterprise Accounts in amounts equal to the Minimum Balance, and additionally to cover any operating cash shortfall. On and after the date that a Senior Financing Loan (as defined in the Management Agreement) is signed and funded, the Tribe shall be responsible to provide operating capital for the Enterprise.

**5.4 Manager Working Capital Advances.** Any advances made by Manager under Section 5.3 (the "Manager Working Capital Advances") shall accrue interest at an annual rate equal to the Interest Rate from the date that advances are made, and shall be repaid as provided in Section 5.6 below.

**5.5 Adjustment to Bank Account.** After the disbursements pursuant to Section 5.3 and establishment of any additional reserves for future disbursements as Manager deems necessary and as are approved by the Business Board, taking into account anticipated cash flow and Operating Costs of the Enterprise, any excess funds remaining in the Enterprise Account(s) over the Minimum Balance, the Capital Replacement Reserve, and such additional reserves as may be approved by the Business Board shall be disbursed monthly in accordance with Section 5.6.

**5.6 Payment of Fees and Tribe Disbursement.** Within twenty one (21) days after the end of each calendar month of operations, Manager shall calculate Gross Revenues, Operating Expenses, and Net Revenues of the Enterprise for the previous month's operations and the Fiscal Year's operations to date. Such Net Revenues shall be disbursed from the Enterprise Account(s) to the extent available in the following order of priority:

- (a) the Minimum Guaranteed Monthly Payment;
- (b) Current principal and interest and any other payments due on all Loans (and if payments are due quarterly, a reserve equal to one third of the scheduled quarterly payment shall be deposited in a designated Enterprise Account for such payment, and may be invested in accordance with the Enterprise Investment Policies pending payment);
- (c) Capital Replacement Reserve contributions pursuant to Section 3.21;
- (d) any amounts advanced by or owed to Manager so long as consistent with this Agreement; and
- (e) the Management Fee.

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All remaining Net Revenues (the "Monthly Distribution Payment") shall be distributed to the Tribe at the same time the Management Fee is paid.

**5.7 Minimum Guaranteed Monthly Payment.** The Enterprise shall, subject to the provisions of Section 5.8, pay the Tribe \_\_\_\_\_ per month beginning on the Commencement Date and continuing for the remainder of the Term (such minimum guaranteed monthly payments described shall be referred to as the "Minimum Guaranteed Monthly Payment"). The Minimum Guaranteed Monthly Payment shall be payable to the Tribe in arrears on the twenty first (21st) day of each calendar month following the month in which the Commencement Date occurs, which payment shall have priority over the Management Fee. If the Commencement Date is a date other than the first day of a calendar month, the first payment will be prorated from the Commencement Date to the end of the month. Minimum Guaranteed Monthly Payments shall also be prorated if gaming is conducted for any other partial months. (

**5.8 Minimum Guaranteed Payment Advances.** Minimum Guaranteed Monthly Payments shall be deducted from any Monthly Distribution Payments to be received by the Tribe under Section 5.6 above in any given month; provided, however,

**5.9 Termination of Payments.** The obligation to make Minimum Guaranteed Monthly Payments shall cease upon termination or expiration of this Agreement, unless the Agreement is terminated by the Tribe for a Material Breach by the Manager.

**5.10 Payment of Net Revenues.** The Net Revenues paid to the Tribe pursuant to this Article 5 shall be payable to the Tribe's bank account specified by the Tribal Council in a notice to Manager pursuant to Section 17.3.

**5.11 Adjustments to Management Fee.** The independent certified public accounting firm selected pursuant to Section 4.4 shall recommend, as part of the annual audit, any adjustments, if necessary, to the annual Management Fee based on the formula set forth in Section 5.1 which adjustments shall be made by Manager.

## **ARTICLE 6            ENTERPRISE NAME; MARKS**

**6.1 Enterprise Name.** The Enterprise shall be operated under the name "Sho-Ka-Wah Casino" or as otherwise provided by the Tribal Council (the "Enterprise Name").

**6.2 Marks.** All Marks shall be subject to the reasonable approval of the Tribal Council. Prior to the Commencement Date and from time to time during the Term hereof, Manager agrees to take such actions on behalf of the Tribe as are reasonably necessary to register and protect all Marks.

**6.3 Signage.** Manager shall erect and install in accordance with local codes and regulations appropriate signs in, on or about the Facility, including, but not limited to, signs bearing Marks as part of the Enterprise Name. The costs of purchasing, leasing, transporting, constructing, maintaining and installing the required signs and systems, and of registering and protecting all Marks, shall be part of the Operating Expenses.

**6.4 License.** The Marks used by or in connection with the Facility may be licensed by the Enterprise from a third party. Any related licensing fees and expenses shall constitute Operating Expenses of the Enterprise.

## **ARTICLE 7            TAXES**

**7.1 State and Local Taxes.** If the State or any local government attempts to impose any tax including any possessory interest tax upon any party to this Agreement or upon the Enterprise, the Facility or the Existing Facility Site, the Tribe may direct the Enterprise, in the name of the appropriate party or parties in interest, to resist such attempt through legal action consistent with Section 4.5. The costs of such action and the compensation of legal counsel shall be an Operating Expense of the Enterprise. Any such tax shall constitute an Operating Expense of the Enterprise. This Section shall in no manner be construed to imply that any party to this Agreement or the Enterprise is liable for any such tax.

**7.2 Tribal Assessments, Charges and Taxes.** The Tribe agrees that neither it nor any agent, agency, affiliate or representative of the Tribe will impose any taxes, fees, assessments or other charges of any nature whatsoever on payments of any debt service on any Loan or on debt service on any other financing for the Facility or for the Enterprise, or on the revenues of the Enterprise or the Facility, or on Manager or the Management Fee; provided, however, the Tribe reserves the right to otherwise impose usual and customary taxes and fees on transactions at or in connection with the Facility or on the Enterprise's employees, officers, directors, vendors and patrons, of such types and percentage amounts not to exceed those imposed by any state or local government within the State. Without limiting the foregoing, the Tribe shall be specifically permitted to impose (a) reasonable charges, assessments, allocations, fines or fees imposed by governmental entities of the Tribe which are reasonably related to the cost of Tribal governmental regulation of public health, safety or welfare, or the integrity of Tribal gaming operations (all of which shall be Operating Expenses); (b) reasonable fees related to the governmental expenses of the Tribe in overseeing the Facility and the operation of the Enterprise, including reasonably allocated costs of tribal police and judicial expenses of the Tribe as set forth in Section 3.10 above (all of which shall be Operating Expenses); and (c) sales, use, excise, hotel occupancy and other similar taxes (excluding taxes, charges, assessments or fees against real property of the Facility or on gaming revenues or earnings) of such types and percentage amounts not to exceed those imposed by any state or local government within the State. Notwithstanding the foregoing, no new assessment, charge or tax may be instituted or assessed by the Tribe or any tribal entity pursuant to this Section 7.2, absent the prior written approval of the Tribal Council.

**7.3 Compliance with Internal Revenue Code.** Manager shall comply with all applicable provisions of the Internal Revenue Code.

**ARTICLE 8 EXCLUSIVITY; NON-COMPETITION; ASSIGNMENT; CHANGE OF CONTROL**

**8.1 Manager Exclusivity and Non-Competition Covenant.** During the Term, neither Manager nor any Affiliate of Manager shall engage in the conduct of Gaming, directly or indirectly, anywhere within \_\_\_\_\_ radius of the Facility, absent consent from the Tribe (which consent shall not be unreasonably withheld). Manager's obligations under this Section 8.1 shall be continuing and shall remain enforceable for the greater of \_\_\_\_\_ after execution of the Agreement or \_\_\_\_\_ after termination or expiration, whichever is greater. 4

**8.2 Tribal Exclusivity and Non-Competition Covenant.** Other than as to the Cloverdale project, the Tribe grants to Manager a right of first refusal to develop and manage any facility for Gaming that the Tribe decides to develop within the State or elsewhere in the United States. The following terms and conditions shall apply to the

right of first refusal, and the Tribe shall not enter into an agreement with a third party for development or management of any facility for Gaming (other than the Cloverdale project), unless:

(a) The Tribe has received a bona fide written offer (the "Offer") for Gaming development or management, signed by the party making the Offer (the "Offeror"), containing all material terms of such Offer, which the Tribe is willing to accept.

(b) Manager has not, within ten (10) business days after the receipt of the notice of the Offer, given to the Tribe written notice (the "Exercise Notice"), signed by Manager, delivered to the Tribe in person or mailed by certified mail, return receipt requested, to the Tribe at the mailing address stated in Section 17.3 of this Agreement (or at such other address as the Tribe shall designate in writing), stating that Manager elects to develop or manage the Gaming facility which is the subject of the Offer on the same terms and conditions as set forth in the Offer.

(c) If Manager gives the Exercise Notice, the Tribe and Manager shall execute definitive development and/or management agreements for the Gaming facility which is the subject of the Exercise Notice upon the same terms and conditions set forth in the Offer, provided, however, that the closing of the definitive agreements shall be within thirty (30) days after the time the Tribe receives the Exercise Notice. If Manager shall not give the Exercise Notice within the time above specified, or if Manager, after giving the Exercise Notice, fails to negotiate in good faith for execution of such definitive agreements on the terms contained in the Offer, in addition to all rights the Tribe may have against Manager as a result of Manager's agreement to develop and/or manage the Gaming facility by giving the Exercise Notice, the Tribe shall be free thereafter to enter into agreements with any other party for development and/or management of the Gaming facility.

(d) The right of first refusal described in this Section 8.2 shall apply to any offer received by the Tribe from a third party, and shall also apply to any facility for Gaming that the Tribe chooses to develop without contracting with a third party for development or management services.



### **8.3 Assignment; Change of Control.**

(a) Manager may not sell or assign its rights and obligations under this Agreement to any entity, unless and until such entity (i) has provided the Tribe with guarantees and assurances satisfactory to the Tribal Council in its sole discretion, and the Tribal Council has approved of such sale or assignment; and (ii) has obtained all Governmental Approvals, including licensing and related approvals from the HGC, as appropriate. No sale or assignment by Manager shall be effective until the foregoing conditions have been met. Any Change of Control of Manager shall be deemed an assignment and shall be subject to the provisions of this subsection.

(b) The Tribe may not assign its rights under this Agreement; except that the Tribe may, without the consent of Manager, assign this Agreement and the assets of the Enterprise to an instrumentality of the Tribe organized to conduct the business of the Enterprise for the Tribe that assumes all obligations herein. No assignment authorized under this subsection shall be effective until all necessary Governmental Approvals have been obtained. No such assignment shall relieve the Tribe of any obligation hereunder, unless otherwise agreed by Manager or the holder of such obligation.

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## **ARTICLE 9 REPRESENTATIONS, WARRANTIES, AND COVENANTS**

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**9.1 Representations and Warranties of the Tribe.** The Tribe represents and warrants to Manager as follows:

(a) Due Authorization. The Tribe's execution, delivery and performance of this Agreement, the Consulting Agreement, the Guaranty, and all other instruments and agreements executed in connection with this Agreement, have been properly authorized by the Tribe and do not require further Tribal approval.

(b) Valid and Binding. This Agreement, the Consulting Agreement, the Guaranty, and all other instruments and agreements executed in connection with this Agreement, have been properly executed, and once approved in accordance with Legal Requirements constitute the Tribe's legal, valid and binding obligations, enforceable against the Tribe in accordance with their terms.

(c) No Litigation. There are no actions, suits or proceedings, pending or threatened, against or affecting the Tribe before any court or governmental agency that relate to the Enterprise or any transaction contemplated by this Agreement, the Consulting Agreement or the Guaranty, except as disclosed on Exhibit C.

**9.2 Tribe Covenants.** The Tribe covenants and agrees as follows:

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(a) The Tribe shall not encumber the Facility or any of the assets of the Facility or the Enterprise, unless pursuant to the Senior Financing Loan Agreement.

(b) The Tribe shall enact no law substantially impairing the obligations of the Tribe related to Manager pursuant to this Agreement, the Consulting Agreement or the Guaranty.

(c) In its performance of this Agreement, the Tribe shall comply with all Legal Requirements.

(d) The Tribe shall not act in any way whatsoever, directly or indirectly, to cause this Agreement to be amended, modified, canceled, or terminated, except pursuant to its express terms or with the consent of the Manager.

(e) Notwithstanding the foregoing, a breach of this Section 9.2 shall not be a basis to overturn, negate or in any manner modify any Tribal Governmental Action through arbitration or other proceedings, and any remedy for such breach shall be subject to the Specific Performance Restriction. The preceding sentence does not prevent an arbitrator from determining that the taking of any Tribal Governmental Action or the failure to take any Tribal Governmental Action, which is not caused by a breach of Manager's obligations under this Agreement, constitutes a breach of this Agreement by the Tribe, thereby resulting in liability on the part of the Tribe for damages in favor of the Manager as provided in this Agreement.

**9.3 Representations and Warranties of Manager.** Manager represents and warrants to the Tribe as follows:

(a) Due Authorization. Manager's execution, delivery and performance of this Agreement and all other instruments and agreements executed in connection with this Agreement have been properly authorized by Manager and do not require further approval.

(b) Valid and Binding. This Agreement and all other instruments and agreements executed in connection with this Agreement have been properly executed and constitute Manager's legal, valid and binding obligation, enforceable against Manager in accordance with their terms.

(c) No Litigation. There are no actions, suits or proceedings pending or threatened against or affecting Manager before any court or governmental agency that would in any material way affect Manager's ability to perform this Agreement. Manager warrants that no litigation so disclosed in any material way affects or will affect Manager's ability to perform under this Agreement.

**9.4 Manager Covenants.** Manager covenants and agrees as follows:

(a) Manager shall not encumber the Facility or any of the assets of the Facility or the Enterprise, unless pursuant to this Agreement, or pursuant to written agreement with the Tribe.

(b) Manager shall comply with all Legal Requirements in its performance of the Agreements.

(c) Manager shall obtain and maintain all necessary licenses and approvals from the HGC, the NIGC, and all other relevant governmental authorities.

(d) Manager shall not act in any way whatsoever, directly or indirectly, to cause this Agreement to be amended, modified, canceled, or terminated, except pursuant to its express terms or with the consent of the Tribe.

(e) Manager agrees not to interfere in or attempt to wrongfully influence the internal affairs or government decisions of the Tribe's government by offering cash incentives, by making written or oral threats to the personal or financial status of any person, or by any other action, except for actions in the normal course of business of Manager that relate to the Enterprise.

(f) **Prohibition of Payments to Members of Tribe's Government.** Manager represents and warrants that no monetary payments have been or will be made by Manager, or any Affiliate or Insider of Manager, to any present or former Member of the Tribe's Government, any Tribe official, any Relative of a Member of the Tribe's Government or Tribe official, any Tribe Government employee, any agent of the Tribe, or any entity known by Manager to be associated with any such person, for the purpose of obtaining any special privilege, gain, advantage or consideration. This prohibition shall not apply to travel, meal, lodging or entertainment expenses paid by the Manager to third parties who provide such services to Members of the Tribe's Government, any Tribe official or any relative of a Member of the Tribe's Government when such expenses are incurred in the ordinary course of and in furtherance of the Manager's duties under this Agreement, the Consulting Agreement and the Guaranty (as applicable).

(g) **Prohibition of Financial Interest in Enterprise.** No Member of the Tribe's Government or Relative of a Member of the Tribe's Government shall have a direct or indirect financial interest in the Enterprise greater than the interest of any other member of the Tribe.

**9.5 No Liens.** Subject to the exceptions stated in this Section 9.5, the Tribe specifically warrants and represents to Manager that during the term of this Agreement the Tribe shall not act in any way whatsoever, either directly or indirectly, to cause any

person or entity to become an encumbrancer or lienholder of the Existing Facility Site or the Facility except as provided under this Agreement and as already disclosed to Manager. Except as otherwise specifically provided in this Agreement, Manager specifically warrants and represents to the Tribe that during the term of this Agreement, Manager shall not act in any way, directly or indirectly, to cause any person or entity to become an encumbrancer or lienholder of the Existing Facility Site or the Facility, or to obtain any interest in this Agreement without the prior written consent of the Tribe, and, where applicable, the United States. The Tribe and Manager shall keep the Facility and Existing Facility Site free and clear of all enforceable mechanics' and other enforceable liens resulting from the construction of the Facility and all other enforceable liens which may attach to the Facility or the Existing Facility Site, which shall at all times remain the property of the United States in trust for the Tribe; provided however, the Tribe may grant liens and security interests pertaining to the Enterprise and the Facility with the prior written consent of the Manager.

**9.6 Permitted Liens.** The Tribe shall have the right to grant the following liens and security interests pertaining to the Enterprise and the Facility:

- (a) Security interests related to the Senior Financing and to any operating lines of credit for the Enterprise;
- (b) Purchase money security interests in Furnishings and Equipment;
- (c) Security interests in Enterprise revenues, subordinate to the right of Manager to receive payment of Management Fees and payments on the Loans;
- (d) Other liens and security interests in assets of the Facility and Enterprise with the written consent of Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 10      DEFAULT**

**10.1 Events of Default by the Tribe.** Each of the following shall be an event of default by the Tribe under this Agreement ("Tribe Event of Default"):

- (a) The Tribe shall commit a Material Breach of any of the Tribe's obligations under this Agreement, the Consulting Agreement or the Guaranty (as applicable), subject to the rights to cure provided in this Agreement or in any of such documents.
- (b) Any of the representations and warranties made by the Tribe in this Agreement, the Consulting Agreement or the Guaranty (as applicable) were not true in

any material respect when made or would not be materially true if made on the date such performance would otherwise be due.

- (c) The Tribe violates the provisions of Article 8 of this Agreement.

If any Tribe Event of Default occurs, Manager may, upon written notice to Tribe, exercise the rights and remedies available to Manager provided in this Agreement; provided, however, that all such rights and remedies shall be Limited Recourse.

**10.2 Events of Default by Manager.** Each of the following shall be an event of default by Manager under this Agreement ("Manager Event of Default"):

- (a) Any Tribal Distribution owed to the Tribe under this Agreement, the Consulting Agreement or the Guaranty (as applicable) is not paid within ten (10) days after its due date.

- (b) Manager shall commit any other Material Breach of any of Manager's obligations under this Agreement, the Consulting Agreement, or the Guaranty, as applicable.

- ~~(c) Any representation or warranty that Manager has made under this Agreement, the Consulting Agreement or the Guaranty (as applicable) shall prove to have been untrue in any material respect when made or would not be materially true if made on the date such performance would otherwise be due.~~

- (d) Manager violates Legal Requirements in the management of the Enterprise, including without limitation the Gaming Ordinance, and such violation is not cured within (i) thirty (30) days after notice, as to the Gaming Ordinance or any other gaming laws or regulations, or (ii) within a reasonable period, not to exceed ninety (90) days, as to any other Legal Requirements.

- (e) Manager violates the provisions of Article 8 of this Agreement.

- (f) Manager or any Affiliate of Manager institutes or consents to any proceeding under a Debtor Relief Law relating to it or to all or any part of its property, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of the Manager or such Affiliate and the appointment continues undischarged or unstayed for sixty calendar days; or any proceeding under a Debtor Relief Law relating to the Manager or any Affiliate or to all or any part of its property is instituted without the

Manager's or Affiliate's consent and continues undismissed or unstayed for sixty (60) calendar days; or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against all or any material part of its property and is not released, vacated or fully bonded within sixty (60) calendar days after its issue or levy.

(g) If any Manager Event of Default occurs, the Tribe may, upon written notice to Manager, exercise the rights and remedies available to the Tribe provided in this Agreement.

**10.3 Material Breach; Right to Cure.** Subject to applicable Legal Requirements, neither Manager nor the Tribe may terminate this Agreement, recover damages or foreclose on security interests on grounds of a potential Material Breach of this Agreement, the Consulting Agreement or the Guaranty (as applicable) unless it has provided written notice to the other party of its intention to terminate this Agreement, seek damages or foreclose. During the five (5) day period after the receipt of such notice (as to payment defaults set forth in subsections 10.2(a) which can be cured within ten (10) days), the thirty (30) day period after the receipt of the notice to terminate (as to defaults which can be cured within thirty (30) days) or the ninety (90) day period after such receipt (as to defaults which cannot be cured within ten (10) or thirty (30) days), whichever is applicable, the party receiving the notice may cure the alleged default and (without waiting for the expiration of such periods) any party may submit the matter to arbitration under the dispute resolution provisions of this Agreement set forth in Article 12. The discontinuance or correction of a Material Breach shall constitute a cure thereof. Nothing in this Section shall affect or impair the obligation of any party to promptly comply with all Legal Requirements, or limit any sanctions that may be imposed for any violation thereof; nor shall this subsection prevent a party from taking such actions within such 10, 30 or 90 day periods as may be permitted or required by this Agreement, the Gaming Ordinance or NIGC regulations. The provisions of this subsection shall control over any conflicting provisions in this Agreement, the Consulting Agreement and the Guaranty. Nothing in this subsection shall apply to potential termination under Sections 10.1(a) or (c), and Section 10.2(a), (c), (d), (f) or (g) of this Agreement.

## **ARTICLE 11 TERMINATION**

**11.1 Voluntary Termination.** This Agreement may be terminated by mutual written consent.

**11.2 Termination if No NIGC Approval.** The Tribe and Manager may each unilaterally terminate this Agreement by written notice if NIGC Approval has not occurred within [ ] after execution of this Agreement.

**11.3 Manager's Right to Terminate on Tribe Event of Default.** Subject to the provisions of Section 10.3 and Article 12, Manager shall be entitled to terminate this Agreement (a) upon a Tribe Event of Default or (b) as specifically provided in this Agreement.

**11.4 Tribe's Right to Terminate on Manager Event of Default.** Subject to the provisions of Section 10.3 and Article 12, the Tribe shall be entitled to terminate this Agreement (a) upon a Manager Event of Default or (b) as specifically provided in this Agreement.

**11.5 Termination if Manager License Withdrawn or on Conviction.** The Tribe may also terminate this Agreement immediately where Manager or Manager's Employees have stolen or embezzled funds from the Enterprise or Manager has had its gaming license withdrawn in any jurisdiction by final administrative action, after completion of judicial review or expiration of the time for seeking such review and any appeals therefrom, or if Manager, or any of Manager's managers, officers or members owning five percent (5%) or more of the membership interests or equity interests of Manager is after the date of this Agreement convicted of a criminal felony or criminal misdemeanor offense involving gaming, fraud or moral turpitude; provided, however, the Tribe may not terminate this Agreement based on a director or officer's conviction where Manager terminates such individual within ten (10) days after receiving notice of the conviction. In the event that any of Manager's managers, officers or members owning five percent (5.0%) or more of the membership interests or equity interest of Manager is convicted of a criminal felony or criminal misdemeanor offense involving gaming, fraud or moral turpitude or that individual's gaming license is withdrawn in any jurisdiction by final administrative action, said individual shall not be allowed to continue management responsibility or be present at the Facility in non-public areas and shall immediately be prohibited by Manager from said activities or presence.

**11.6 Involuntary Termination Due to Changes in Legal Requirements.** It is the understanding and intention of the parties that the development, construction and operation of the Enterprise shall conform to and comply with all Legal Requirements. If during the term of this Agreement, the Enterprise or any material aspect of Gaming at the Existing Facility Site is determined by the Congress of the United States, Department of the Interior of the United States of America, the NIGC, or the judgment of a court of competent jurisdiction (after expiration of the time within which appeals must be filed or completion of appeals, if any) to be unlawful under federal law, the obligations of the parties hereto shall cease and the Agreements shall be of no further force and effect as of the date of such determination; subject, however, to the following provisions as to damages: (i) the Tribe shall retain all fees and Tribal Distributions previously paid or advanced to it pursuant to this Agreement, the Consulting Agreement or the Guaranty (as applicable); (ii) any money loaned to the Tribe by Manager, or other obligations owed to

Manager under this Agreement, the Consulting Agreement or the Guaranty (as applicable) as of the date of such determination, shall be repaid to Manager, provided that the Tribe's obligation to make such repayment shall be Limited Recourse; and (iii) the Tribe shall retain its interest in the title (and any lease) to all Enterprise assets, including the Gaming Site and any fixtures, supplies and Furnishings and Equipment, subject to any liens against Furnishings and Equipment. If (A) the Tribe determines that it can legally continue to operate portions of the Enterprise after the change in Legal Requirements without subjecting any related Furnishings and Equipment to forfeiture or seizure by any applicable governmental authority, and (B) it is Economically Feasible for the Tribe to continue such portions of the Enterprise and it elects to do so by written notice to Manager within ninety (90) days after the occurrence of the change in Legal Requirements, then the Tribe shall have the right to continue to operate such portions of the Enterprise (and retain any Furnishings and Equipment used in connection with such portions of the Enterprise) so long as the same (x) remain Economically Feasible to operate, (y) any related Furnishings and Equipment shall remain free from any such forfeiture or seizure, and (z) are promptly and continually thereafter operated and maintained in accordance with reasonable industry standards. The Tribe and Manager agree that any Furnishings and Equipment against which Manager has a lien (together with any casualty insurance proceeds applicable thereto) and which related to (1) portions of the Enterprise that are not Economically Feasible for the Tribe to continue to operate, (2) would otherwise be subject to forfeiture or seizure as described above, or (3) with respect to any other portions of the Enterprise that the Tribe shall cease to continually operate (collectively, the "Surplus Equipment"), shall be promptly liquidated (subject to approvals as required under any other financing agreements) in a commercially reasonable manner, and the Tribe shall pay the proceeds of such sale(s), to the extent permitted by any applicable subordination agreement, to Manager on account of any Loans and other amounts owing to Manager under this Agreement, the Consulting Agreement or the Guaranty (as applicable).

**11.7 Indemnification on Termination.** In the event of termination, (a) Manager shall indemnify and hold the Tribe harmless for, from and against all loss, liability, damage and expense from or arising out of any acts or omissions of Manager prior to termination in violation of, or beyond the scope of its authority under, this Agreement; and (b) the Tribe shall indemnify and hold Manager harmless for, from and against all loss, liability, damage and expense from or arising out of any acts of Manager prior to termination pursuant to and in accordance with the terms of this Agreement. This covenant shall survive any termination.

## **ARTICLE 12      DISPUTE RESOLUTION**

**12.1 Good Faith Efforts to Resolve Disputes.** Subject to the limited waiver of sovereign immunity set forth herein, all disputes between the Tribe and the Manager with

respect to this Management Agreement shall be resolved by the dispute resolution provisions contained in this Article 12. Whenever during the term of this Agreement, any disagreement or dispute arises between the parties as to the interpretation of this Agreement, the Consulting Agreement or the Guaranty, or of any rights or obligations arising hereunder, such matter(s) shall be resolved whenever possible by the parties first meeting in person and conferring in a good faith attempt to resolve the dispute through negotiations not later than ten (10) days after receipt of written notice describing the dispute, unless both parties agree in writing to an extension of such ten (10) day period.

**12.2 Arbitration.** If a dispute is not resolved to the satisfaction of the parties within thirty (30) days after the first meeting as set forth in Section 12.1, then, but only if the parties have complied with the prior paragraph, either party may seek a resolution by arbitration in accordance with the procedures set forth herein. Any claim, controversy or dispute arising out of or relating to this Management Agreement, the Consulting Agreement and/or the Guaranty, including the permitting or compelling of arbitration, shall be submitted to binding arbitration conducted by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA then in effect, without regard to any rule or provision which might be construed as a waiver of the Tribe's sovereign immunity. Such arbitration shall be held in Santa Rosa, California, or such other place as the parties agree. Judgment on any arbitration award may be confirmed by and entered in the United States District Court for the Northern District of California or in the event that such court lacks jurisdiction, then the courts of the State of California; provided such award is consistent with this Management Agreement and the Tribe's limited waiver of sovereign immunity. Appeal may be taken from a decision of such court regarding confirmation and/or enforcement of the decision in arbitration.

(a) Arbitration shall be heard by a single arbitrator determined by the parties. If the parties cannot agree on an arbitrator, then one shall be appointed by the American Arbitration Association. The arbitrator should be a retired Federal Judge, if available. If not available, the arbitrator must have some knowledge of Federal Indian law and commercial transactions and be either a licensed attorney with at least fifteen (15) years' experience or a retired State judge. The arbitrator must be neutral and unbiased. The arbitrator shall be subject to the Specific Performance Restriction as defined herein.

(b) The arbitration hearing should be conducted within forty-five (45) days after an arbitrator is appointed and a decision rendered within thirty (30) days after the hearing. The decision of the arbitrator shall be final and binding upon the parties, self-executory, and without further appeal or any judicial confirmation, recourse, or other process other than for confirmation and enforcement of the arbitration judgment. The costs of arbitration shall be borne equally by the parties. Each side shall bear its own



costs and attorneys' fees. The arbitration award shall be in writing and shall set forth the rationale and reasoning for such decision.

(c) Notwithstanding the foregoing, an arbitrator shall not have the power to compel, negate, assume, usurp, or in any manner affect any Tribal Governmental Action. The preceding sentence does not prevent an arbitrator from determining that the taking of any Tribal Governmental Action, or the failure to take any Tribal Governmental Action, constitutes a breach of this Agreement by the Tribe.

**12.3 Tribe's Waiver of Sovereign Immunity and Consent to Suit.** The Tribe hereby expressly grants a limited waiver of its sovereign immunity from unconsented suit solely for actions brought by Manager (and no other person or entity) pursuant to the dispute resolution process set forth in this Article 12. Tribe agrees that the limited waiver of sovereign immunity contained in this Section 12.3 is irrevocable. The Tribe does not waive its sovereign immunity with respect to actions by third parties or disputes between the Tribe and Manager not arising out of this Agreement, the Consulting Agreement or the Guaranty. This limited waiver is to be strictly and narrowly construed in favor of Tribe and may be enforced only under the conditions set forth herein. This limited waiver may only be invoked if the invoking party is not in breach of any terms of this Agreement and this Agreement remains in full force and effect. No causes of action or claims in law or equity are cognizable against Tribe except actions against Tribe itself for specific performance or injunctive relief or actual damages arising out of the Agreement. No claim for other damages (special, consequential, punitive or otherwise) shall be made, entertained, or awarded against the Tribe. Tribe does not waive its sovereign immunity with respect to actions by third parties or disputes between Tribe and Manager not arising out of this Agreement. This limited waiver does not allow any actions to be brought against the tribal council, tribal officers, tribal attorneys, tribal employees, tribal agents, tribal members, or any other person or entity acting on behalf of Tribe. Except as to undistributed net revenues of the Enterprise, in no instance shall any enforcement of any kind whatsoever be allowed against any other assets of the Tribe, a tribal enterprise, any individual tribal council member, tribal officer, tribal attorney, tribal employee, tribal agent, tribal member, or any other person or entity acting on behalf of the Tribe to satisfy any award or order. The Tribe further waives any requirement concerning the exhaustion of tribal court remedies with respect to any disputes between the parties. The Tribe appoints the Chairman of the Tribal Council as its agent for service of all process under or relating to this Agreement, the Consulting Agreement and the Guaranty. The Tribe agrees that service in hand or by certified mail, return receipt requested, shall be effective for all purposes under or relating to this Agreement, the Consulting Agreement and the Guaranty (as applicable) if served on such agents.

**12.4 Choice of Law.** In determining any matter the Arbitrator shall apply the terms of this Agreement, without adding to, modifying or changing the terms in any

respect, and in their interpretation and construction first shall apply federal law; second, any relevant law of the Tribe; and third, California law.

**12.5 Confidentiality.** The parties agree that any dispute resolution meetings or communications, arbitration proceedings, or agreements among the parties settling or otherwise relating to any claims arising from or related to this Agreement, the Consulting Agreement or the Guaranty shall be and remain confidential to the extent permitted by applicable law.

**12.6 Rights and Duties of Parties.** The parties agree that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement, the Consulting Agreement and/or the Guaranty, the parties shall continue to possess the rights, duties, and obligations set forth in this Agreement, and the parties shall continue their performance of the provisions of the Agreement. Notwithstanding any provision of this Section to the contrary, if the dispute involves the revocation of Manager's license, Manager will suspend performance of its managerial duties under this Agreement; however, the Enterprise will continue to pay the Management Fee into an off-reservation third party interest-bearing escrow account until such time as the dispute is resolved.

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## **ARTICLE 13      CONSENTS AND APPROVALS**

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**13.1 Tribe.** Where approval or consent or other action of the Tribe is required, such approval shall mean the written approval of the Tribal Council evidenced by a resolution thereof, certified by a Tribe official as having been duly adopted, or such other person or entity designated by resolution of the Tribal Council. Any such approval, consent or action shall not be unreasonably withheld, conditioned or delayed.

**13.2 Manager.** Where approval or consent or other action of Manager is required, such approval shall mean the written approval of the Managing Officer. Any such approval, consent or other action shall not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 14      DISCLOSURES**

**14.1 Members and Managers.** Manager warrants that on the date of this Agreement its Affiliates, managers, officers and members owning five percent (5%) or more of the membership interests or equity interests are those listed on Exhibit D.

**14.2 Warranties.** Manager further warrants and represents as follows:

(a) No officer, director or individual owner of five percent (5%) or more of the membership interests or equity interests of Manager, or any Affiliate of Manager,



has been arrested, indicted for, convicted of, or pleaded nolo contendere to any felony or any gaming offense, or had any association with individuals or entities known to be connected with organized crime; and

(b) Manager agrees that all of its managers and officers and any individual owners of five percent (5%) or more of the membership interests or equity interests of Manager, shall:

(i) consent to background investigations to be conducted by the HGC, the State, the Federal Bureau of Investigation (the "FBI") or any law enforcement authority to the extent required by the IGRA and the Compact;

(ii) be subject to licensing requirements in accordance with the Gaming Ordinance and this Agreement;

(iii) consent to a background, criminal and credit investigation to be conducted by or for the NIGC, if required;

(iv) consent to a financial and credit investigation to be conducted by a credit reporting or investigation agency at the request of the HGC;

(v) cooperate fully with such investigations; and

(vi) disclose any information requested by the HGC which would facilitate the background and financial investigation.

Any materially false or deceptive disclosures or failure to cooperate fully with such investigations by an employee of Manager shall result in the immediate dismissal of such employee. The results of any such investigation may be disclosed by the Tribe to federal officials and to such other regulatory authorities as required by law.

(c) Manager further agrees that the top ten (10) individuals having the highest equity interest in Manager, both now and in the future, shall comply with the licensing requirements, investigations and disclosures set forth in Section 14.2(b)(i) – (vi).

## **ARTICLE 15      NO PRESENT LIEN, LEASE OR JOINT VENTURE**

**15.1** The parties agree and expressly warrant that neither the Management Agreement nor any exhibit thereto is a mortgage or lease and, consequently, does not convey any present interest whatsoever in the Facility or the Existing Facility Site, nor any proprietary interest in the Enterprise itself; except, with regard to the Cash Collateral Account, the security interest created in such Cash Collateral Account (if applicable) and,



with regard to the Furnishings and Equipment, any security interest (if applicable). The parties further agree and acknowledge that it is not their intent, and that this Agreement shall not be construed, to create a joint venture between the Tribe and Manager; rather, Manager shall be deemed to be an independent contractor for all purposes hereunder.

#### **ARTICLE 16      CONCLUSION OF THE MANAGEMENT TERM**

**16.1** Upon the conclusion or the termination of this Agreement, Manager shall cooperate with the Tribe and take reasonable steps for the orderly transition of management of the Enterprise to the Tribe or its designee pursuant to a transition plan; such transition period shall be for a reasonable period but not less than sixty (60) days, provided, however, that in the event that Manager's license has been revoked by the HGC, Manager shall not be present at the Facility and shall have no obligation or responsibility to prepare a transition plan or take part in any manner in the orderly transition of management of the Enterprise to the Tribe. No later than four (4) months before the expiration of the Term of this Agreement, Manager shall submit to the Tribal Council a transition plan which shall be sufficient to allow the Tribe to operate the Enterprise and provide for the orderly transition of the management of the Enterprise.

#### **ARTICLE 17      MISCELLANEOUS**

**17.1 Situs of the Contracts.** This Agreement, as well as all contracts entered into between the Tribe and any person or any entity providing services to the Enterprise, shall be deemed entered into in the State of California.

**17.2 Manager's Interest.** Nothing contained herein grants or is intended (a) to grant Manager a titled interest to the Facility, or (b) in any way to impair the Tribe's sole proprietary interest in the Facility.

**17.3 Notices.** All notices, requests and other communications to any party hereunder shall be in writing, may be personally served or sent by telefax, mail or the express mail service of the United States Postal Service, Federal Express or other equivalent overnight or expedited delivery service, and (a) if given by personal service, or telefax (confirmed by telephone), it shall be deemed to have been given upon receipt; (b) if sent by mail, it shall be deemed given upon actual receipt; or (c) if sent by Federal Express, the express mail service of the United States Postal Service or other equivalent overnight or expedited delivery service, it shall be deemed given upon the earlier of (i) actual receipt or (ii) on the next Business Day after delivery to such overnight or expedited delivery service, delivery charges prepaid, and properly addressed to the Tribe or the Manager. For purposes hereof, the address of the parties to this Agreement shall be as follows:



If to the Tribe:	Hopland Band of Pomo Indians Attn: Chairperson 3000 Shanel Road Hopland, California 95449
with a copy to:	Thomas Weathers, Esq. Alexander, Berkey, Williams & Weathers LLP 2030 Addison Street, Suite 410 Berkeley, California 94704
If to the Manager:	Ellis Gaming Hopland Management, LLC Attention: President 900 South Pavilion Center Drive Suite 170 Las Vegas, Nevada 89144

Any party may, by proper written notice hereunder to the other party, change the address to which notices shall thereafter be sent to it. Notwithstanding anything to the contrary implied or expressed herein, the notice requirements herein (including the method, timing or deemed giving of any notice) are not intended to and shall not be deemed to increase the number of days or to modify the method of notice or to otherwise supplement or affect the requirements for any notice required or sent pursuant to applicable law (including, without limitation, any applicable statutory or law requirement), or otherwise given hereunder, that is not required under this Agreement.

**17.4 Relationship.** Manager and the Tribe shall not be construed as joint venturers or partners of each other by reason of this Agreement and neither shall have the power to bind or obligate the other except as set forth in this Agreement.

**17.5 Further Actions.** The Tribe and Manager agree to execute or cause to be executed all contracts, agreements and documents and to take all actions reasonably necessary to comply with the provisions of this Agreement and the intent hereof.

**17.6 Waivers.** No failure or delay by Manager or the Tribe to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term, or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No wavier of

any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

**17.7 Captions.** The captions of each article, section and subsection contained in this Agreement are for ease of reference only and shall not affect the interpretational meaning of this Agreement.

**17.8 Severability.** If any provision, or any portion of any provision, of this Agreement is found to be invalid or unenforceable, such unenforceable provision, or unenforceable portion of such provision, shall be deemed severed from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement. If any provision, or any portion of any provision, of this Agreement is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

**17.9 Third Party Beneficiary.** This Agreement is exclusively for the benefit of the parties hereto and it may not be enforced by any party other than the parties to this Agreement and shall not give rise to liability to any third party other than the authorized successors and assigns of the parties hereto.

**17.10 Survival of Covenants.** Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

**17.11 Estoppel Certificate.** Manager and the Tribe agree to furnish to the other party, from time to time upon request, an estoppel certificate in such reasonable form as the requesting party may request stating whether there have been any defaults under this Agreement known to the party furnishing the estoppel certificate and such other information relating to the Enterprise as may be reasonably requested.

**17.12 Periods of Time; Time of Essence.** Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on a Saturday, Sunday or legal holiday under the laws of the Tribe or the State, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday. Time is of the essence.

**17.13 Exhibits.** All exhibits attached hereto are incorporated herein by reference and made a part hereof as if fully rewritten or reproduced herein.

**17.14 Successors and Assigns.** The benefits and obligations of this Agreement shall inure to and be binding upon the parties hereto and their respective permitted successors and assigns.



**17.15 Confidential and Proprietary Information.** Manager and the Tribe each agree that any information received concerning the other party during the performance of this Agreement, regarding the parties' organization, financial matters, marketing and development plans for the Enterprise, the Existing Facility Site, or other information of a proprietary nature (the "Confidential Information") will be treated by both parties in full confidence except for such public disclosure as may be required to allow Manager and the Tribe to perform their respective covenants and obligations hereunder, or in response to legal process, and will not be revealed to any other persons, firms or organizations. The obligations not to use or disclose the Confidential Information shall not apply to Confidential Information (a) which has been made previously available to the public by the Tribe or Manager, or becomes generally available to the public, unless the Confidential Information being made available to the public results in a breach of this Agreement; (b) which prior to disclosure to the Tribe or Manager was already rightfully in any such persons' possession; (c) which is obtained by the Tribe or Manager from a third party who is lawfully in possession of such Information, and not in violation of any contractual, legal or fiduciary obligation to the Tribe or Manager, with respect to such Confidential Information; or (d) which is disclosed pursuant to legal process, provided that the party served with such process shall notify the other of such service and provide the other with an opportunity to contest such process. Manager's obligations under this Section 17.15 shall be continuing and shall remain enforceable for the greater of \_\_\_\_\_ after execution of this Agreement or \_\_\_\_\_ after termination or expiration, whichever is greater. 24

**17.16 Patron Dispute Resolution.** Manager shall submit all patron disputes concerning play to the HGC pursuant to the Gaming Ordinance, and the regulations promulgated thereunder.

**17.17 Modification.** Any change to or modification of this Agreement must be in writing signed by both parties hereto and shall be effective only upon approval by the Chairman of the NIGC, the date of signature of the parties notwithstanding.

**17.18 Waiver of Jury Trial.** The Manager and the Tribe agree that neither of them nor any assignee or successor shall (a) seek a jury trial in any lawsuit, proceeding, counterclaim or other action relating to this Agreement, the notes, or any related instruments, or the dealings or the relationship between or among any of them, or (b) seek to consolidate any such action with any other action in which a jury trial cannot be or has not been waived. The provisions of this paragraph have been fully discussed by the Manager and the Tribe, and these provisions shall be subject to no exceptions. Neither the Manager nor the Tribe has agreed with or represented to the other that the provisions of this paragraph will not be fully enforced in all instances.

### **17.19 Entire Agreement.**

(a) Notwithstanding that the Parties have entered into several other agreements between them (namely, the Consulting Agreement, the Guaranty, and this Agreement), this Agreement (together with all exhibits referenced herein) constitutes the entirety of this Agreement and the entire understanding of the parties hereto regarding the management of the Enterprise, and supersedes all other prior agreements and understandings, written or oral, between the Parties regarding the management of the Enterprise. All prior and contemporaneous conversations, discussions, negotiations, possible and alleged agreements and representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and superseded hereby. Manager and the Tribe each affirmatively represents that no promises have been made to that party which are not contained in this Agreement, the Consulting Agreement, or the Guaranty, and stipulates that no evidence of any promises not contained in this Agreement, the Consulting Agreement or the Guaranty shall be admitted into evidence on their behalf.

(b) Collateral agreements between or among the Tribe and Manager or Affiliates of Manager consist of the following documents, which are not part of this Management Agreement:

(i) Consulting Agreement.

All such collateral agreements supersede all other prior collateral agreements and understandings, written or oral between the parties, and each party affirmatively represents that no promises have been made to that party which are not contained in this Agreement, and stipulates that no evidence of any promises not contained in this Agreement shall be admitted into evidence on its behalf.

(c) This Agreement shall not be supplemented, amended or modified by any course of dealing, course of performance or uses of trade and may only be amended or modified by a written instrument duly executed by officers of all parties and approved by the NIGC Chairman.

**17.20 Government Savings Clause.** The Tribe and Manager each agree to execute, deliver and, if necessary, record any and all additional instruments, certifications, amendments, modifications and other documents as may be required by the United States Department of the Interior, Bureau of Indian Affairs, the office of the field Solicitor, the NIGC, or any applicable statute, rule or regulation in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations, liens and interests of the parties hereto to the fullest extent permitted by law; provided, that any such additional instrument, certification, amendment, modification or other document



shall not materially change the respective rights, remedies or obligations of the Tribe or Manager under this Agreement or any other agreement or document related hereto.

**17.21 Preparation of Agreement.** This Agreement was drafted and entered into after careful review and upon the advice of competent counsel; it shall not be construed more strongly for or against either party.

**17.22 Consents.** Except where expressly indicated that an agreement or consent is in the sole or unilateral discretion of a party, no agreement or consent under this Agreement shall be unreasonably withheld, conditioned or delayed.

**17.23 Execution.** This Agreement may be executed in four counterparts, two to be retained by each party. Each of the four originals is equally valid. This Agreement shall be binding upon both parties when properly executed and approved by the Chairman of the NIGC (the "Effective Date"). The Commencement Date and Effective Date shall be synonymous.

**17.24 Buy-out Option.**

(a) The Tribe shall have the right, beginning [ ] after the Commencement Date, to buy out the remaining term of this Agreement (the "Buyout Option"), provided that such buyout includes [ ]

(b) The Buyout Option price shall be determined by [ ]

**17.25 Manager Collateral.** The obligations of the Tribe to Manager under this Agreement, the Consulting Agreement and the Guaranty (as applicable) shall be secured by a security interest in the Tribe's interest in the Collateral.

**17.26 Limited Recourse.** The obligations of the Tribe to Manager under this Agreement, the Consulting Agreement and the Guaranty shall be a Limited Recourse obligation of the Tribe.

**17.27 Manager Security.** Manager's security interest in the Collateral shall be subject to the following terms and conditions:

(a) Manager may block payment to the Tribe of Monthly Distribution Payments (other than the Minimum Guaranteed Monthly Payment and, only to the extent of the Net Revenues) and may foreclose on its security interest in the Collateral only upon the occurrence of a Tribe Event of Default under this Agreement, if such default is not cured within any applicable cure period and, if arbitration is timely demanded, only after entry of an arbitrator's award finding a Tribe Event of Default has occurred.

(b) Manager must comply with applicable law with regard to taking possession of, and foreclosure on, the Collateral, including without limitation any legal requirements relating to the possession or sale of gaming equipment.

(c) Manager's security interest in the Collateral and any other collateral of Manager at or related to the Facility shall be subordinated to security interests already granted to Bank of America and to be granted to any possible Senior Financing Lender.

(d) Nothing in the Collateral Agreements or under any other provision of this Agreement or any related agreement shall alter the remedies available to Manager on a Tribe Event of Default, which shall continue to be controlled by Article 12 of this Agreement.

(e) Upon payment in full of all amounts due Manager under this Agreement, the Consulting Agreement and the Guaranty (as applicable), Manager shall promptly terminate the Collateral Agreements and release any related security interests.

(f) No collateral instrument shall grant Manager a private right of entry into the Facility or the Existing Facility Site, and Manager waives any such right.

**17.28 Guaranty.** All of Manager's obligations under this Agreement are guaranteed by Ellis Gaming, LLC pursuant to that Guaranty from Ellis Gaming LLC to the Tribe, the form of which is attached hereto as Exhibit B.

**17.29 Cultural Respect.** The Manager agrees that the choices involving the Enterprise including but not limited to the employee' uniforms, interior design, promotions and marketing shall be culturally appropriate and shall in no way denigrate Indian history or culture by use of stereotyped images, symbols or language. If, at any time, the Manager is notified by the Tribal Council in good faith that any such activity is not culturally appropriate, the Manager shall have thirty (30) days to cease such activity or be in material breach of this Agreement.

WB

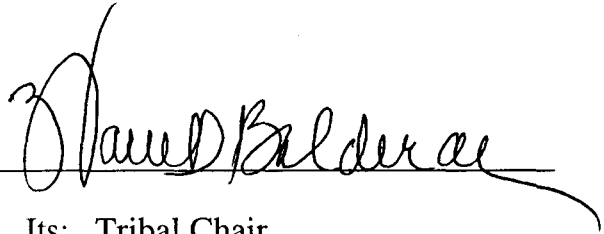
**17.30 Force Majeure.** No party shall be in default of its performance due hereunder if such failure of performance is due to causes beyond the party's reasonable control, including, but not limited to, acts of God, war, fires, floods, earthquakes, labor disputes, or accidents causing damage to or destruction of the Facility or property necessary to operate the Enterprise.

Handwritten signature or initials, possibly 'WB', in the bottom right corner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WITNESS:

HOPLAND BAND OF POMO INDIANS, a  
federally recognized Indian tribe

By:   
Its: Tribal Chair

**ELLIS GAMING HOPLAND  
MANAGEMENT, LLC**, a Nevada limited  
liability company

By: \_\_\_\_\_

Its: Manager

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

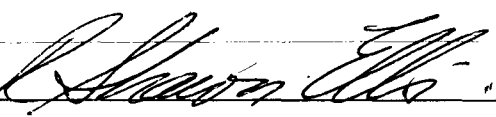
WITNESS:

HOPLAND BAND OF POMO INDIANS, a  
federally recognized Indian tribe

By: \_\_\_\_\_

Its: Tribal Chair

**ELLIS GAMING HOPLAND  
MANAGEMENT, LLC**, a Nevada limited  
liability company

By:  \_\_\_\_\_

Its: Manager

Approved pursuant to 25 U.S.C. Section 2711

NATIONAL INDIAN GAMING  
COMMISSION

By  \_\_\_\_\_

Its: Chairperson



EXHIBIT A  
LEGAL DESCRIPTION OF CURRENT CASINO SITE

The land referred to herein is situated in the State of California, County of Mendocino, and is described as follows:

Parcel 48 as shown upon the Record of Survey, Hopland Rancheria, recorded May 26, 1964, in Case 2 of Maps, Drawer 3, Page 14, in the office of the Recorder of the County of Mendocino, State of California.

Excepting therefrom the following:

Beginning at the Southeast corner of said Parcel 48; thence North 89°48' West, 301.53 feet; thence in a Northeasterly direction to the Northeast corner of said Parcel 48; thence South 232.49 feet to the point of beginning.

APN: 50-550-09